



HM Treasury/ Financial Conduct Authority DP23/5

Advice Guidance Boundary Review – proposals for closing the advice gap

Submission by The Financial Inclusion Centre

About The Financial Inclusion Centre

The Financial Inclusion Centre (FIC) is an independent, not-for-profit policy and research group (www.inclusioncentre.org.uk). The Centre's mission is to promote a financial system and financial markets that work for society. The Centre works at two main levels:

Promoting system level change

Research and policy development to promote sustainable, resilient, economically and socially useful financial markets that: benefit the environment; encourage responsible corporate behaviours and create a positive social impact; and efficiently allocate long term financial resources to the real economy.

Ensuring households' core financial services needs are met

Promoting fair and inclusive, efficient and competitive, well-governed and accountable, properly regulated financial markets and services that meet households' core financial needs. We do this by undertaking research into the causes of market failure in the sector, formulating policies to address that market failure, developing alternative solutions where the market cannot deliver, and campaigning for market reform. We focus on households who are excluded from, face discrimination in, or are underserved by financial markets and services.

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Introduction

We are pleased to make a submission to such an important discussion paper. This is a crucial moment for the future of consumer protection in financial services. We have been observing with growing concern the increased lobbying activity by a number of financial services trade bodies for what amounts to a programme of financial deregulation across a number of sectors including insurance, consumer credit, and financial advice and investment markets.

The FCA should be congratulated for the significant improvements it has driven through in conduct of business standards in the financial advice and investment markets. We are concerned that the very real progress made as a result of the implementation of the Retail Distribution Review (RDR), and robust FCA supervision, is at risk of being reversed as a result of the proposals in DP23/5. These proposals would also undermine the FCA's flagship Consumer Duty reforms.

We do appreciate the pressure the FCA is under from government and industry lobbies to redraw the regulatory boundary. But we urge the regulator to stand firm and not implement what we believe would be ill-advised reforms.

Summary of Financial Inclusion Centre's concerns

We have a number of concerns about the specific proposals in DP 23/5. We are particularly concerned about the push by industry lobbies to redraw the advice boundary and limit firms' liability for redress.

- Industry lobbies might say they are trying to close the advice gap. But, we believe the real intention is to change the regulatory boundary to facilitate sales of greater volumes of higher cost, riskier products while reducing the potential liability for redress in the event of consumers being sold suboptimal products. The Consumer Duty would not act as a backstop in this case as firms would now be operating within a redrawn boundary.
- The proposals outlined in DP 23/5 are designed to meet the needs of the industry, not consumers' needs. Of course, we want to see more underserved consumers receiving support to make better financial decisions. Yet, the proposals in DP23/5 will not address that problem. It does not make sense to implement reforms that would not help underserved consumers but would harm the interests of another set of consumers.
- The introduction of new types of advice such as targeted support will not address the fundamental cause of the 'advice gap'. Due to the economics of distribution, the commercial financial services sector is unable to serve millions of consumers on terms that make sense for both consumers and the industry. Weakening consumer protection by changing the boundary will not improve the economics of distribution. This would not suddenly make millions of households with modest assets commercially attractive to the for-profit financial services industry. However, it would enable the industry to target and extract more value from comparatively better off households.
- The introduction of further variations and definitions of advice such as targeted support and simplified advice will just further complicate an already complex advice market. This will make it harder for consumers to understand the nature of advice they are receiving and their rights to redress in the event of being given unsuitable or inappropriate advice.
- We have seen in the past that fierce competition has been a primary cause of consumer detriment in this market. Firms competed aggressively for market share and distribution,

not for consumers. Initiatives such as the Retail Distribution Review brought discipline and self-restraint into the market. Weakening consumer protection would surely incentivise more aggressive selling of high risk, high-cost products. Some firms might behave responsibly at the outset. But, competitors would use the redrawing of the boundary to target consumers and migrate them up the product chain to higher cost products with reduced liability for redress. Responsible firms would soon find themselves losing market share. They would have to respond by also adopting more aggressive business models.

- ‘Targeted support’ would be a particularly ill-advised option particularly if the FCA accepted the industry lobby arguments that the boundary should be redrawn. We take issue with the use of the term ‘support’ with this option. This would not be support in the truest sense. Targeted support would be used by the industry as an opportunity to channel consumers into higher risk, higher charging products. In other words, this would be *selling* not support.
- We note also that DP 23/5 proposes that with targeted support firms would be making ‘suggestions’ to consumers not recommendations. We think this has the potential to mislead consumers. Firms would be designing interventions, including behavioural interventions, with the express intent of persuading consumers to take a particular course of action. This would be, in effect, sales *advice* delivered within a redrawn boundary with access to redress restricted.
- Industry lobbies claim that: the boundary can be safely redrawn; firms will use the opportunity responsibly and so the risk of harm is limited; and that the Consumer Duty would act as a ‘backstop’. In our view, this is an illogical and disingenuous position. If firms really believed they could use targeted support responsibly then they should not object to retaining the current boundary and consumer protection standards. After all, if their systems and controls are so good, then there would be few incidences that would give rise to redress claims so they would not be exposed to high redress costs.
- But, the fact that industry lobbies are seeking to redraw the boundary and limit access to the FOS, speaks volumes. They do not actually have confidence in firms’ systems and controls. They are aware that fierce competition could emerge with the weakening of consumer protection. Firms would have to adopt aggressive sales tactics to compete – see above. The risk of consumers being sold suboptimal products would grow so they want their potential liability for redress reduced.
- Remember, the whole point of the industry preferred model is to transfer the risk of suboptimal products being sold to the consumers. In a nutshell, if HMT/ FCA go ahead with targeted support, the opportunity will be created for firms to aggressively sell high cost, higher risk potentially suboptimal products but with reduced liability for redress.
- To be clear, we want to see ‘innovative’ advice models emerging. We have no issue with firms offering targeted *advice* as long as they retain liability for redress. Targeted advice is still advice. The intention would still be to persuade consumers to take a set of actions. In our view, the ‘reasonableness’ test in the Consumer Duty already protects firms. Firms have to take *appropriate* account of the needs and characteristics of the relevant retail customers. There may well be merit in further clarifying the advice boundary. But, redrawing the boundary would undermine the effectiveness of the Consumer Duty from a consumer perspective.
- Redrawing the boundary and introducing yet more categories of ‘advice’ is unlikely to address the issue of consumers investing in speculative or unregulated products. Making it easier for regulated firms to sell ‘mainstream’ products to consumers attracted by the

prospect of high returns and the thrill of speculation is not going to act as a constraint on those consumers indulging in detrimental behaviours.

- We understand the pressure the FCA is under from government and industry lobbies. But, even at this stage we would urge the FCA to rethink its approach to closing the advice gap. Rather than improve matters, redrawing the boundary and introducing yet more definitions of advice risks reversing the very real progress made since the implementation of the Retail Distribution Review (RDR).
- Instead of complicating the market, we argue simplification would be better. We need clear distinctions between:
 - **Advice and information.** Advice in this case should be taken to mean any promotion, communication or engagement (by any means including electronic, social media or otherwise), or recommendation intended to influence or cause a consumer to take action or make a decision on a financial matter. This may not necessarily involve a personalised recommendation or require a decision on a specific product or service. Information should be defined as material intended only to answer questions or provide factual information but without intending to cause a consumer to take action. Firms will know which of their activities are intended to influence or cause consumers to take action. Firms, of course, should be allowed to innovate within this simplified structure. If they want to offer what is in effect ‘targeted’ or ‘simplified’ advice that is fine as long as consumers’ current rights to redress are maintained. We see no need for, or benefit in, introducing new categories such as simplified advice, or targeted advice to add to the current distinction between information, guidance, and holistic advice.
 - **Independent advisers and sales agents/ promoters.** The term independent should be reserved for individuals and firms that are remunerated entirely by fees paid by the consumer. All others should be called sales agents or promoters and be required to inform consumers in clear terms about the risks and limitations of their services.
 - **For-profit and non-profit.** We do see a case for allowing advice charities, other non-profits, and public bodies such as Money and Pensions Service (MaPS) more freedom to proactively advise consumers on savings and a limited range of investment options (without recommending specific products).
- Rather than weaken consumer protection to incentivise firms to provide advice to underserved households, the Government and FCA should explore alternative models such as a National Financial Advice Network funded by a levy on the industry.
- The FCA should pursue the development of portable fact finds to help address the cost of collecting information on consumers’ personal circumstances.

Response to specific questions

Q1: In your view, do any of the proposals outlined in this paper adversely affect different groups of consumers and why?

We think it is important to understand:

- i. the motivation behind the industry lobbying for redrawing the advice/ guidance boundary and introducing yet more complexity into the advice market; and
- ii. what is likely to happen if HMT/ FCA do redraw the boundary and introduces yet more definitions of advice.

If the boundary is redrawn in a way the lobbies want, we are unlikely to see the industry targeting households with comparatively modest levels of accessible savings. Commercial imperatives mean they will use the opportunity to target better off households with larger amounts of savings and ‘migrate’ them up the product chain by selling them more costly, higher risk investment products.

This might be fine if this led to those households obtaining higher net returns and building up additional assets over time in a well regulated market. However, it is important to remember that the industry lobbies are seeking a reduction in consumer protection. They want firms’ liability for redress to be reduced.

In a nutshell, the industry wants to use this opportunity to sell higher volumes of more costly products safe in the knowledge that if these products are suboptimal, then liability for redress will be reduced.

Moreover, it is hard to see how introducing yet more definitions of ‘advice’ will aid consumer understanding of financial services. This additional complexity will make it more difficult for consumers to make effective decisions and choices leaving them more vulnerable to behavioural manipulation and misselling.

So, in terms of affecting different groups of consumers, redrawing the boundary and introducing additional types of advice is unlikely to help those groups who are not investing, as the industry will use the opportunity to target better off consumers. Moreover, it will have a detrimental impact on those who are investing as the consumer protection they receive will be weakened. Making the advice market even more complex will undermine the ability of consumers generally to make informed, effective decisions and choices.

Specifically, it is unlikely to benefit households from a minority ethnic background as these households tend to have lower incomes and fewer assets.

Q2: Is there a role for the 3 proposals (further clarifying the boundary, targeted support, and simplified advice) outlined in this paper? Could these work alongside existing forms of support? When responding, please include how the proposals would (or would not) work alongside each other.

Clarifying the boundary is the least risky option particularly as the ‘reasonableness’ test in the Consumer Duty protects firms. Firms have to take *appropriate* account of the needs and characteristics of the relevant retail customers.

We think the other two options would not add any value but would undermine existing levels of consumer protection. Targeted support (proposal 2) is particularly risky if it is accompanied by industry demands to redraw the boundary. It would encourage a return to aggressive selling of high risk, high-cost products with reduced access to redress.

Industry lobbies talk of ‘trade offs’ – that is, a weakening of consumer protection in return for the greater good of underserved consumers making better financial choices for the future. However, we think that it is logical to presume that targeted support would just enable firms to sell higher volumes of more costly, higher risk products to better off households but with reduced liability for redress. Rather than address the ‘advice gap’ and support underserved consumers, it would just enable the industry to extract more value from better off households. Commercial imperatives mean that firms are unlikely to use this option to target underserved households with fairly modest savings.

Even if products were sold without explicit fees this would provide limited protection. All that is likely to happen is firms will create the impression that advice is being provided free (when it would actually be selling) and costs recouped further up the product chain through higher ongoing charges. Once consumers are pulled into this new sales relationship, they are unlikely to then compare investment charges and shop around.

We, of course, want to see more underserved consumers receiving support to make better financial decisions. Yet, the proposals in DP23/5 will not address that problem. It does not make sense to implement reforms that would not help underserved consumers but would harm the interests of another set of consumers.

The introduction of new types of advice such as targeted support will not address the fundamental cause of the ‘advice gap’. The commercial financial services sector is unable to serve millions of consumers on terms that make sense for both consumers and the industry. Weakening consumer protection by changing the boundary will not improve the economics of distribution to suddenly make millions of households with modest assets commercially attractive to the for-profit financial services industry.

As outlined above, rather than further complicate the advice market by introducing yet another definition of advice, HMT/ FCA should take the opportunity to radically simplify it. Even if HMT/ FCA does not embark on this necessary simplification, at the very least it should not make matters worse. We see no merit in changing the current definitions. There is no need for, or benefit in, creating new terms to be used in the market.

Firms, of course, should be allowed and encouraged to innovate within the current structure. If they want to offer what is in effect ‘targeted’ or ‘simplified’ advice that is fine as long as consumers’ current rights to redress are maintained. But that targeted or simplified advice is still advice and should be treated as such.

We would urge against defining new types of advice in regulation and allowing these names to be used in the market. This would just add to the existing complexity in the advice market. Consumers just need to know if they are getting *advice* or *information* and whether the person/ firm providing that advice is independent or a sales agent/ promoter.

Q3: Are there are any other proposals that we should consider to help close the advice gap and how can we support the provision of more guidance? Please outline your proposal in as much detail as possible.

We, of course, want to see more underserved consumers receiving support to make better financial decisions. Yet, the proposals in DP23/5 will not address that problem. It does not make sense to implement reforms that would not help underserved consumers but would harm the interests of another set of consumers.

The advice market could be improved by radical simplification – see below. But, the priority should be to avoid implementing reforms that would make matters worse.

The fundamental cause of the ‘advice gap’ is that the commercial financial services sector is unable to serve millions of consumers on terms that make sense for both consumers and the industry. There is no easy answer to this fundamental problem. We cannot think of a market-based solution that would meaningfully and safely address this issue.

Rather than further complicate the market, a radical simplification is needed. We need clear distinctions between:

Advice and information

Advice in this case should be taken to mean any promotion, communication or engagement (by any means including electronic, social media or otherwise), or recommendation intended to influence or cause a consumer to take action or make a decision on a financial matter. This may not necessarily involve a personalised recommendation or require a decision on a specific product or service. Information should be defined as material intended only to answer questions or provide factual information but without intending to cause a consumer to take action. Firms will know which business models and activities are intended to influence or cause a consumer to take action.

Independent adviser and sales agents/ promoters

The term independent should be reserved for individuals and firms that are remunerated entirely by fees paid by the consumer. All others should be called sales agents or promoters.

For-profit and non-profit

As mentioned, we cannot imagine a market-based solution that would make any real difference to the advice gap in a safe way. Allowing firms to aggressively sell greater volumes of higher cost, higher risk products with increased risk of consumers being sold suboptimal products is not the same as promoting financial access and inclusion.

Realistically, if there is no feasible market-based solution, we must seriously consider alternative, non-profit solutions. We do see a case for allowing advice charities, other non-profits, and public bodies such as Money and Pensions Service (MaPS) more freedom to proactively reach out to and advise consumers on savings and a limited range of investment options (without recommending specific products). We would support carving out exemptions for non-profit organisations but not for commercial for-profit organisations.

More radical options should be considered. Some time ago, Consumers Association/ Which? published proposals for a publicly funded National Financial Advice Network (NFAN).¹ This model should be reconsidered. This approach would treat financial wellbeing in the same way we approach public health. The NFAN would be able to do more than 'diagnose' financial problems it would be able to proactively offer financial health checks and offer 'financial fitness' programmes. It could proactively go into workplaces to undertake large scale advice clinics. This model would complement for-profit financial advice provision and be funded by a levy on the industry. The NFAN advisers, following a diagnosis of a consumer's finances, would be able to inform them of ways to maximise their options. For example, an adviser would be able to say they had too much sitting in low interest accounts and that they should actively consider investment products. The adviser would then inform the consumer of sources of impartial further information and what to watch out for when choosing a product.

Q4: Do you think that further guidance would provide more clarity to enable firms to get closer to the boundary? What scenarios, if any, do you think could be set out in FCA guidance? Is guidance needed on the scenarios in Chapter 3? Would there be any appropriate cases for Handbook rules rather than guidance being used?

Q5: In your view, is there value in simplifying existing guidance? If so, what are the key relevant areas of PERG and other guidance that the FCA should focus on?

We would support the FCA issuing further guidance on the boundary. We would argue firms are already protected by the 'reasonableness' test in the Consumer Duty. So, they should not need further clarification. But, given the difficulty firms seem to have in understanding their basic responsibilities in regulation, it is probably sensible for the FCA to provide this further clarification.

The examples set out in para 3.5 are helpful. We would not have a problem with firms targeting consumers on that basis as long as liability for redress is not compromised.

¹ [House of Commons - Treasury - First Report \(parliament.uk\)](https://www.parliament.uk/commons/debates/2017/170617/170617-170617)

Q6: Do you support the concept of targeted support and do you support developing a regulatory framework to deliver it? If not, why not? Are there any key features (in addition to those discussed below) that you believe targeted support should include?

Q7: What types of firms do you think would be well placed to provide targeted support?

Q8: Do you think there should be restrictions on the types of firms allowed to provide targeted support, and why?

No. We do not support the concept of targeted support as set out in DP23/5 and as promoted by the industry. This is a particularly ill-advised option. This would result in a reduction in consumer protection as firms liability for redress would be reduced and so encourage the sale of suboptimal products.

Industry lobbies will say that: the boundary can be safely redrawn; firms will use the opportunity responsibly and so the risk of harm is limited; and the Consumer Duty would act as a 'backstop'. In our view, this is an illogical and disingenuous position. If firms really believed they could use targeted support responsibly then they should not object to retaining the current boundary and consumer protection. After all, if their systems and controls are so good, then there would be few incidences that would give rise to redress claims.

But, the fact that they are seeking to redraw the boundary and limit access to the FOS, speaks volumes. They do not actually have confidence in their internal systems and controls to protect consumers from aggressive selling of suboptimal products. They are aware the fierce competition that would emerge with the weakening of consumer protection means firms would have to adopt aggressive sales tactics to compete – see above. They are aware that the risk of consumers being sold suboptimal products would be increased so they want firms' liability for redress reduced.

Targeted support is not innovative. It would amount to a reduction in consumer protection to incentivise firms to sell more products to consumers. To be clear, we want to see 'innovative' advice models emerging. We have no issue with firms offering targeted **advice** as long as they retain liability for redress.

We are concerned at the use of terms like 'support' and 'suggestions' in the proposals. Targeted support is not support in a meaningful sense. Firms would still be intending to persuade consumers to take a certain course of action for the commercial benefit of the firm. This is *sales advice* and should be described as such.

In our view, the 'reasonableness' test in the Consumer Duty already protects firms. Firms have to take *appropriate* account of the needs and characteristics of the relevant retail customers. There may well be merit in further clarifying the advice boundary. But, redrawing the boundary would undermine the effectiveness of the Consumer Duty from a consumer perspective.

HMT/ FCA say it would be crucial for consumers to make a clear positive choice to receive targeted support and that they would need to understand what this new type of support is, and especially how it is separate and distinct from simplified and holistic advice. We think it is even less likely

consumers will understand the distinction between the various types of advice if targeted support is introduced. Complexity undermines effective consumer decision making.

Given that we think that targeted support as envisaged in DP23/5 is an ill-advised option, Questions 7 and 8 are not relevant.

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.

As mentioned, we have no issue with firms offering targeted *advice* within the current set up. The scenarios outlined would constitute targeted advice. We do not see the need for changing the advice boundary or limiting access to redress. Nor do we have an issue with firms using a generic message such as ‘people like you’.

Indeed, in some of those scenarios, we would argue that firms should be proactive in supporting consumers as part of the Consumer Duty.

But, if the boundary was redrawn and firms’ liability for redress reduced, it is easy to envisage those harmless scenarios providing opportunities for firms to migrate consumers into more costly, higher risk potentially suboptimal ‘solutions’.

Q10: Do you agree with the high-level minimum requirements for a proposed new standard for targeted support? Please explain your answer.

Q11: Are there any regulatory rules or guidance that apply to your firm which could impact on your ability – positively or negatively – to contact consumers and offer them targeted support? Please specify which rules and explain the impact.

We have no objection to firms offering targeted *advice*. We would actively welcome firms doing more to use data in an innovative way to identify consumers with similar needs. If necessary, to support this, the FCA should clarify the advice boundary and reassure firms that this use of data targeting is acceptable but emphasise that consumers’ access to redress is not affected. We would also welcome the FCA building on the existing product governance framework and Investment Pathways approach.

But, to reiterate, targeted advice is very different to targeted support as envisaged by industry lobbies. Targeted support is still sales advice but limits consumers’ access to redress.

The minimum requirements set out in DP 23/5 would not be much of a safeguard in the model envisaged by the industry. The industry preferred model would facilitate mass market targeting of consumers to migrate them into more costly, more risky potentially suboptimal products with access to redress limited. The Consumer Duty would not provide a backstop in this case as firms would be acting ‘reasonably’ within this redrawn boundary.

If these safeguards were actually effective, then they would have the same effect on the industry as the current regime. In other words, firms would still not be willing to serve this market because they

would be worried about being held to account. Remember, the whole point of the industry preferred model is to transfer the risk of suboptimal products being sold to the consumer so firms can sell higher volumes of products with reduced liability for redress.

Q12: Which of the 3 options for types of suggestions would be most impactful under targeted support, and why? Are there any other options we should consider?

Q13: How should communications to consumers be framed so that they can effectively understand the targeted support they are receiving? Please give examples.

We see no harm in firms taking advantage of the three options outlined in para 4.28 – as long as existing rights to redress are preserved.

We are concerned about the wording of Options B and C which emphasises consumers making the choices. This suggests that the responsibility for choosing products actively put in front of consumers by firms would lie with the consumer. Therefore, in the event of suboptimal products being sold, consumers rights to redress would be curtailed. This is precisely the scenario industry lobbies want.

This is why we are so concerned that HMT/ FCA should make a clear distinction between advice and information – see above. What HMT/ FCA outlines in para 4.28 by any common sense definition is advice. Firms are consciously trying to influence or persuade consumers to take a certain course of action.

Enhanced communications about the nature of this variation of advice is unlikely to provide much protection. Indeed, introducing a new variation of advice will complicate matters further and undermine consumers' ability to make effective decisions and protect themselves.

Q14: Do you agree that targeted support should not necessarily be subject to explicit charges? If so, how should firms be remunerated, and why?

Q15: If you agree with Q14, what safeguards and disclosure requirements should be in place to manage any conflicts of interest arising from enabling targeted support to not be subject to explicit charges, and why?

As explained, we think that the general concept of targeted support is very ill-advised. So, both explicit charges and 'free' initial targeted support are unlikely to protect consumers from harm. Both pricing models will allow firms, especially vertically integrated firms, to aggressively target and sell high volumes of costly, more risky products.

The 'free' model is likely to mislead consumers. Firms would just recoup costs further up the product chain from what would be effectively a captive pool of customers. This would create similar problems as the 'free if in credit' current account model. Consumers may think their banking is 'free' but it is not. They pay in other ways.

The same is likely to happen with targeted support. Firms will use the lure of 'free advice' to channel customers into higher cost products further along the product chain. We cannot rely on competition

to protect consumers and maintain pressure on product charges. Once consumers are channelled into this product chain, they are unlikely to switch to better value options.

Explicit charges at least could help consumers recognise more clearly that they are being sold to rather than being offered a 'free' service which would be misleading.

But, even explicit charges would offer limited protection. There is no guarantee that explicit charges for targeted support would protect consumers from high charges further up the chain. Firms would have an opportunity to levy charges at the point of sale and on an ongoing basis.

Nevertheless, of the two options, requiring explicit charging would be the least worst option as it would help consumers recognise they are being sold to, not being 'supported'.

More importantly, if HMT/ FCA goes ahead with targeted support, it is critical that the regulator makes greater use of product regulation including price capping to protect consumers from the anti-competitive practices that are likely to result from targeted support.

Moreover, the FCA should take advantage of the Consumer Duty to publish reports on the charges imposed by firms for targeted support and ongoing product charges. This could impose some constraints on firms' behaviours.

Q16: Do you agree that there should be no limit on product and investment range or monetary value limits (beyond those applying to the Review as a whole and in the retail distribution space more generally) applied to targeted support? If you disagree, what should the limits on product and investment range and monetary value be and why?

Q17: Are there any other limitations which should be imposed on targeted support? Please explain your answer.

No. We do not agree there should be no limit on the product and investment range or monetary value limit. The whole concept of targeted support was supposed to be that it can be 'safely' provided as it focuses on a fairly narrow ranges of options and is designed to help consumers with fairly modest levels of assets.

Not applying limits means that this deregulatory measure would be applied to the entirety of the retail market (with the exception of DB transfers and pensions with safeguarded benefits). As we outline above, firms are unlikely to use the opportunity provided by targeted support to serve households with modest assets. Commercial imperatives mean they will use the opportunity to target those with higher value assets as this is where the most attractive product revenue streams will be found. We think this the real motivation behind industry lobbying for targeted support.

To limit the potential harm caused by targeted support, HMT/ FCA should restrict the type of products that can be sold through targeted support and limit the monetary value of assets in question.

Q18: Do you agree with the disclosure objectives for targeted support? Are there other factors that consumers should understand when making decisions in relation to targeted support?

We are concerned about the use of the term ‘support’ to describe the activity of targeted support and the term ‘suggestion’ to describe the firm/ consumer relationship involved in targeted support.

Targeted support is not support. It is a sales process designed to channel customers into higher cost, higher risks products.

Moreover, firms will be designing processes and interventions, including behavioural interventions, with the express intent of persuading consumers to take a certain course of action. That is not a suggestion. That is, in effect, sales advice with consumers ability to obtain redress in the event of being sold suboptimal products being restricted.

Q19: Do you consider an ‘outcomes based’ or ‘prescriptive’ approach to rulemaking most appropriate in underpinning disclosures for targeted support? If a prescriptive approach is thought more appropriate, please outline what detail you would like included and why?

Given the risks associated with targeted support, a prescriptive approach for certain requirements is more appropriate. For example, the FCA should prescribe which types of product can be sold through targeted support, limit the monetary value of assets being advised on, require firms to clearly inform consumers that this is sales advice not ‘support’, and clearly warn consumers that their rights to redress will be limited.

The information that firms gather, process, and analyse to target consumers to sell products should not be prescribed. In an era of mass profiling, fintech, and big data financial services firms are in a position to use data to better understand consumer behaviours and attitudes. Prescribing the information to be analysed would allow firms to evade responsibility for ignoring relevant data. It would also undermine the effectiveness of the Consumer Duty as firms would be able to deliberately ignore relevant consumer behavioural data.

As mentioned, the FCA should also require firms to submit detailed reports to the regulator on the details of products sold via targeted support.

Q20: How should targeted support be delivered from a regulatory and legislative perspective and why? Which regulatory and legislative mechanism should be used to deliver targeted support, and why?

We have no real view on this. But, we would urge HMT/ FCA to not introduce new regulated activities or sub permissions. The advice market is already unnecessarily complex. It should not be further complicated. Most importantly, if HMT/ FCA does insist on introducing new activities or permissions it should make clear that this does not affect in any way consumers’ existing rights to redress.

Q21: Do you think the scenarios outlined for consumers considering investing a lump sum or reviewing an existing investment are appropriate for a new simplified advice regime? Please

suggest any other scenarios where simplified advice might be appropriate and could benefit consumers.

Q22: Do you agree that wealth accumulation products should be in scope of simplified advice, and why? Are there any wealth accumulation products that you feel should be included or excluded, and why?

We repeat the same points made about targeted support, above. Introducing yet another variation of advice would further complicate an already complex advice market. This might suit the commercial interests of firms but does not reflect the needs of consumers.

To reiterate, we would welcome ‘innovation’ in the advice market. If firms want to offer simplified advice then fine. The FCA should clarify that this is possible. But, this should be done within the existing regulatory boundary.

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

Yes, if HMT/ FCA go ahead with simplified advice, at the very least decumulation should be out of scope. These are very complex decisions and if the wrong advice is given, consumers may have few opportunities to rectify this.

Q24: Do you consider that a cap of £85,000 is the correct investment limit for simplified advice? If not, please suggest an alternative limit, and explain why this would be more appropriate.

We have no real view on this. But, obviously the lower the cap, the less scope there is for consumer harm to result from simplified advice.

Q25: Do you consider that simplified advice should allow firms to provide repeated instances of transactional advice to a customer but exclude ongoing and periodic review services? Please state the reasons for your answer.

We have no issue with of firms providing repeated instances of simplified advice as long as it is done within the existing regulatory framework.

Q26: Could including the information to be collected from a client in Handbook rules provide the legal certainty for firms to offer a simplified advice service, while still providing appropriate levels of consumer protection? How might that be delivered? Please explain your answer.

No. The idea of prescribing specifically the information to be gathered carries obvious risks. As mentioned, in an era of mass profiling, fintech and big data financial firms are in a position to use data to better understand consumer behaviours and attitudes. Prescribing the information to be analysed would allow firms to evade responsibility for ignoring relevant data. It would also undermine the effectiveness of the Consumer Duty as firms would be able to deliberately ignore relevant consumer behavioural data.

Q27: Do you have any suggestions for how to make it easier for consumers to pay for simplified advice, without undermining the changes made as part of the RDR?

If HMT/ FCA insist on introducing a new category of advice, to avoid the potential for reintroducing commission bias, there should be an explicit fee for this simplified advice. Payment in instalments would aid affordability.

Q28: Do you agree with our proposed T&C framework for simplified advice? Do you agree that firms and advisers wishing to provide simplified advice on more than one product type should comply with the same T&C standards as for holistic financial advice?

Yes. Firms and advisers providing simplified advice on more than one product type should comply with existing standards.

There is a more general point here. We have no issue with firms using advisers and sales people with different levels of qualifications for different levels of products as long as the senior people in organisations take full responsibility for the advice provided.

Q29: If the proposals in this paper are taken forward, do firms consider there should be any amendments to the Dispute Resolution sourcebook to enable them to provide different levels of support? If so, please describe them.

This question is aimed at firms. However, we would reiterate that if these proposals are implemented, consumers' rights to redress and make complaints will be restricted. Redrawing the boundary means firms will be given cover to sell greater volumes of high cost, higher risk products knowing that consumers will have fewer rights to complain and seek redress.

Q30: We welcome views on whether stakeholders believe the scope of FSCS protection should include the 3 proposals in this paper, or whether FSCS protection might be more appropriate for some proposals or products than others, and why.

If the HMT/ FCA go ahead with these proposals, then all three should be within the scope of the FSCS. The FCA should enhance its authorisation process by explicitly risk rating firms' new business models and align the levy paid by firms to this risk rating.

Q31: What examples of consumer support do firms want to provide to consumers, particularly in light of our proposals, but feel they are unable to do so because of PECR direct marketing rules or other data protection rules? Evidence on the consumer outcome being sought and, where

appropriate, reasoning for why direct marketing rather than other communications is necessary for delivering this outcome, would be welcome.

Q32: What steps could be taken to provide reassurance about the electronic communications that firms can provide to give greater consumer support, in compliance with PECR direct marketing rules? Do you consider a similar approach to the joint FCA / ICO letter on savings rates may help provide additional clarity on this?

We would urge the FCA and other regulators not to reduce the current protections in the PCER 2003. Remember, the essence of industry lobbying is to persuade regulators to allow firms to target large numbers of consumers to create opportunities to sell higher cost, higher risk products. Weakening the PCER protections would facilitate these business model increasing the risks to consumers.

Q33: How can we design the policy proposals to best strengthen competition in the interests of consumers? Are there any risks or perverse incentives we should be aware of? Please provide specific examples.

Competition is not the main issue here. Competition as it operates in financial services is not a very effective means of protecting consumers or ensuring they receive good value products and services. Regulatory interventions such as robust conduct of business rules are effective at protecting consumers. Yet, these proposals, particularly targeted support, threaten to undermine that consumer protection.

HMT/ FCA is right to worry that these proposals will confer a particular advantage on larger firms. These proposals are very likely to lead to significant consolidation in the market.

These proposals are also likely to harm the advice market generally. Although these proposals are meant to help consumers with modest assets who are not the usual target market for holistic advice, as we explain elsewhere larger firms will use the deregulation to prioritise targeting those with higher levels of assets.

Whether or not this consolidation results in consumer detriment very much depends on how the FCA responds to this market dominance. The fact that there is too few providers in a market does not have to be a problem. Too much choice can be as bad as too little choice. The FCA will have to intervene robustly to constrain potentially harmful business models adopted by these dominant firms. Product regulation such as price capping is a particularly effective regulatory intervention. Yet, the FCA has always been reluctant to use this intervention which has been shown to work. We would urge the FCA to put product regulation front and centre of its approach to regulating the market.

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.

This question is aimed at pension scheme trustees. However, we would make the point that non-profit institutions such as pension scheme trustee boards should be encouraged to play a bigger role in supporting people to make effective pension choices. The potential for conflicts of interest are limited. Whereas, commercial for-profit institutions such as Master Trusts are susceptible to conflicts of interest and should be treated differently.

Q35: Are there any considerations concerning the investment advice boundary for non-authorised persons you wish to raise

N/A

This marks the end of The Financial Inclusion Centre submission

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