

## **Financial Conduct Authority (FCA)**

### **Consultation Paper CP26/10**

#### **Simplifying the Pensions & Investment Advice Rules**

#### **Submission by the Financial inclusion and Markets Centre (FIMC)**

### **About The Financial Inclusion and Markets Centre**

The Financial Inclusion and Markets Centre is a dedicated unit of the Financial Inclusion Centre which focuses on financial services policy and regulation, financial market reform, and evaluating the economic, environmental, and social utility of finance. The new unit also covers work evaluating the impact of developments at the intersection of finance and technology including AI.<sup>1</sup>

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<sup>1</sup> [About | The Financial Inclusion Centre](#)

## Introduction

We are pleased to submit a response to such an important consultation. For further information, please contact Mick McAteer [mick.mcateer@inclusioncentre.org.uk](mailto:mick.mcateer@inclusioncentre.org.uk) We are unable to respond in detail to all of the questions so we have focused on those issues that will have the most impact on consumers and markets.

## Summary of our submission

- We fully support the overarching objectives of ensuring more consumers: have the support to make positive financial choices and avoid making suboptimal decisions;<sup>2</sup> and receive better value for money from the financial advice market.<sup>3</sup>
- But, we question the means by which the FCA intends to pursue these objectives. The proposals on simplified advice cannot be considered in isolation and must be seen in the context of the wider reforms to the market for financial advice and the redress system. The combined effect of the reforms will be to weaken consumer protection and access to due redress.
- We fully support the FCA's aim of streamlining and simplifying the rulebook where this can be done without compromising consumer protection. Yet, the latest proposals introduce yet more complexity and confusion into an already complex financial advice market. Consumers in the process of making some of the most important financial decisions in their lives will now have to differentiate between six different types of service and understand the relative value and consumer protection standards that accompany those services - information only, guidance, targeted support, basic advice, simplified advice, and full scope advice. If ongoing advice services are included that makes seven types of service. This is not a market designed around consumer needs; rather it is designed to accommodate the business model preferences and concerns of the market.
- The package of reforms, including targeted support, will weaken consumer protection in the market.<sup>4</sup> With targeted support, and now simplified advice, the FCA is trying to shift responsibility for suboptimal outcomes to consumers and is giving firms safe harbour protections when selling products based on a more limited understanding of consumers' needs and circumstances. Some may argue that the Consumer Duty will provide the necessary protections. But that is not a logically consistent position. Redrawing the regulatory boundaries and providing 'safe harbours' must by definition limit the reach of the Consumer Duty and, in addition, reduce firms' potential liability for redress. If the Consumer Duty did retain its current application, then obviously the industry would not be satisfied.

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<sup>2</sup> For example, on the positive side by utilising available savings more efficiently and on the negative side by avoiding drawing down too much from pension pots.

<sup>3</sup> Interestingly, while the focus of these proposals are the groups of underserved consumers, the FCA has identified a group of up to 1.5m potentially *overserved* advice takers who may be paying too much for advice which provides little value. And, as we explain below, the growth in fees generated from retail investors has far outstripped general inflation raising concerns about value extraction.

<sup>4</sup> See: [FCA consultation CP25/17 on 'targeted support'](#) | [The Financial Inclusion Centre](#)

- Moreover, steps are being taken to bring FOS more within the orbit of the FCA thereby limiting the ability for FOS to take an independent view on what is fair and reasonable.<sup>5</sup> Furthermore, specific proposals in CP26/10 could potentially impact a consumer's ability to make a civil claim for damages through a private right of action (PROA), including the ability to make a claim to the Financial Services Compensation Scheme (FSCS) where a firm fails. The FCA would also not be able to impose an industry-wide consumer redress scheme in relation to breaches of the Duty under section 404 of FSMA.
- We also struggle to see how some of the key proposals on suitability and proportionality will work in practice. Some of the proposals contained in the consultation seem to contradict the Consumer Duty requirement for firms to avoid causing foreseeable harm and could lead to situations where firms' sales staff are encouraged to 'unknow' information gleaned during the advice (or more accurately the sales) process.
- This consultation paper reveals once again that many firms appear to seriously struggle with a system that allows them significant discretion on interpreting what legislators, via regulators, expect of them with regards to treating customers fairly. In effect, parts of the market does not trust itself to provide innovative advice services for fear of falling foul of what are not particularly demanding regulatory standards. It surely should be a cause for concern for the FCA that the senior leadership of financial institutions whose behaviours can have a significant impact on the welfare of millions of consumers have had to be told what to do via prescriptive rules to stay on the right side of regulation.
- At the same time, the industry complains that the rules are too prescriptive and 'burdensome'. So, to try to square this circle, the FCA is moving towards an even more discretionary based approach which also seeks to give the industry more clarity. Of course, what the industry seeks is not clarity on rules but 'safe harbours' against the risk of being open to redress liabilities in a more permissive regime. Unfortunately, this is precisely what the FCA intends to give them via these reforms.
- The FCA has attempted several times to accommodate the market, to give the market clarity and reassurance. Each time the industry has come back and demanded more. Whether or not the market takes full advantage of targeted support and simplified advice very much depends on how the FCA now polices the market and how much of a safe harbour the FCA provides firms in practice. We would not be surprised if, in the future, the industry comes back and asks for even more accommodation and further weakening of standards.
- The FCA is relying more on outcomes-based regulation but appears reluctant to specify what constitutes good outcomes. It is relying instead on providing firms with

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<sup>5</sup> The proposed reforms will restrict the ability of FOS to make decisions independently of the FCA so undermine a critical part of the UK's tripartite system of regulation. See FIMC's response to CP25/22 and CP26/9.

more freedom and discretion on interpreting regulatory requirements and determining good outcomes. This could result in significant variability in outcomes, which could be suboptimal for consumers. We also think that this increasing reliance on an outcomes-based approach could make it harder for the FCA to monitor and supervise the market if there is a significant variability in the approaches adopted by firms.

- The FCA could have utilised its flagship Consumer Duty initiative to greater effect. The FCA could have consulted on requiring firms via the Consumer Duty to be more proactive in identifying customers who are making suboptimal decisions. Moreover, while the focus of these proposals are groups of underserved consumers, the FCA has identified a group of up to 1.5m potentially *overserved* advice takers who may be paying too much for advice which provides little value. And, as we explain below, the growth in fees generated from retail investors has far outstripped general inflation raising concerns about value extraction. Again, the Consumer Duty could have been used to ensure that the market is delivering value for money for investors.
- Unfortunately, rather than actively use the Consumer Duty, the FCA has chosen to weaken consumer protection to incentivise the market. The key now will be for the FCA to issue clear guidance on what is not acceptable practice under this new regime and to make it clear that it will robustly enforce against harmful behaviours. Although, to reiterate, the way the FCA is moving the regulatory boundary means the regulator is limiting its own ability to act.
- We are not convinced that much of the market will respond in the way the FCA hopes. If the market does respond in the way the FCA hopes, this will create consumer detriment which could have been avoided.

## Response to specific questions

### **Question 1: Do you agree with how we have consolidated the chapters and our approach to remove the distinctions between MiFID, non-MiFID business and insurance-based investment products and other life policies?**

We agree with the principle of consolidating chapters and standardisation if this is standardisation at the appropriate level. For too long, regulation has been structured around the legal and corporate needs of different types of financial institution even though the products they manufacture and sell perform the same basic function eg. helping consumers invest for the future. This silo approach helps neither consumers nor firms.

### **Question 2: Do you agree that changing the suitability requirement from consideration of 'necessary' to 'sufficient' information, along with the proposed supporting guidance, will give firms confidence to take a more proportionate approach to assessing suitability?**

This is a question for industry as they will need to determine whether the current reforms and the FCA's attitude to supervision and enforcement of the Consumer Duty and simplified advice models provide them with enough of a safe harbour to sell products using the simplified advice model. Remember, the reason so many different versions of financial 'advice' are being created is because the industry does not trust itself to adopt innovative advice models for fear of falling foul of reasonable expectations around treating customers fairly.

We do think that unless the FCA provides very clear safe harbours, many firms could struggle to determine and operate a workable distinction between 'necessary' and 'sufficient'. Safe harbours in this case would mean explicit reassurance that firms will be protected from redress liabilities if poor consumer outcomes result from selling products via simplified advice. While that might satisfy firms, it would be a poor outcome for consumers.

It could actually be argued that in some cases 'sufficient' signals higher expectations than 'necessary'. For example, the statement 'necessary but not sufficient' means that complying with a necessary condition - while necessary to deliver an appropriate outcome - is not automatically sufficient to deliver the right outcome.

The FCA's current regulatory approach is based on the firms which make up the market developing their own ways of interpreting and complying with outcomes-based regulation, rather than rely on the FCA to set down explicit standards. But, as mentioned, the market has struggled in the past when it is given discretion to interpret principles based or outcomes-based regulation.

So, we also think that many firms will struggle with reconciling simplified advice with the Consumer Duty expectations. An example relates to the interpretation of 'foreseeable harm' under the Consumer Duty. What steps will the FCA expect firms to take under simplified advice to identify foreseeable harm?

Even under comparatively 'straightforward' scenarios eg. investing a lump sum into a diversified ISA portfolio (para 2.28) identifying consumers' capacity to understand and bear risk may not be necessarily straightforward. Will the consumers being targeted sufficiently understand different definitions and presentations of market risk? Will firms be required to confirm that consumers do not have debts which should first be settled? What happens if firms target consumers using the simplified advice approach but become aware of important information rather than actively seek that information? Will the FCA ensure that firms do not pressure sales teams to 'unknow' information gleaned - even if inadvertently - during the sales process to stay within the simplified advice definition?

If this change of definition is implemented badly, it could signal a shift in emphasis from firms being expected to exercise a reasonable duty of care for establishing and meeting consumers' needs to one where the priority is firms preferred business models. Firms preferred business models will determine the limits of the assessment of consumer needs.

Of course, the FCA might say that the new market for financial advice will provide consumers with greater choice of types of service and if they do not like the limited service

offered through simplified advice, then they can take their custom elsewhere or request a different level service. But, that places a great deal of expectation on consumers to understand the different types of service in what is now an overly complex market for financial advice.

There is the obvious incentive for firms who base their business strategy on targeted support and/or simplified advice to **not** seek to establish whether targeted consumers may have needs that cannot be met by targeted support and/or simplified advice. It is not clear how the FCA will deal with this risk.

The FCA says that it proposes supplementing the rule with Handbook guidance to emphasise the concept of proportionality, to give firms confidence that they can and should make judgements of what constitutes sufficient information in different scenarios. The FCA guidance will also emphasise the regulator's expectation that firms need a reasonable basis for determining that a recommendation is suitable and do not need to carry out a comprehensive review of needs and circumstances to determine optimal solutions.

It is not at all clear how this abstract concept of proportionality will work in practice in these cases. If firms are allowed to limit the information they gather about a target consumer to suit their preferred business model (eg. targeted support and/or simplified advice), how will they determine what is proportionate and/or a reasonable basis for an assessment and recommendation?

If the FCA is to proceed with these reforms, we urge it to produce clear instructions for firms on what types of behaviours are **not** acceptable along with a robust statement that the FCA intends to supervise closely how these new found freedoms for firms are being deployed and enforce sanctions where these freedoms are being exploited to the detriment of consumers.

Note that we do not argue that firms should be required to gather the fullest information possible in every circumstance. But, we do think the FCA will need to set down the minimum categories of information obtained from the consumer to allow for a meaningful preliminary assessment of suitability and a safe determination of whether simplified advice is likely to be appropriate.

**Question 3: Do you agree with our proposed approach to considering a client's knowledge and experience?**

**Question 4: Do you have any comments on how we have defined the circumstances in which a knowledge and experience assessment need not be undertaken?**

We anticipate the same problems with this proposal as with the suitability requirement proposals in Q2. It is not clear how firms can know what represents a proportionate approach, without first establishing the knowledge and experience of the target-consumer and therefore their capacity to understand the potential risks and harms associated with even comparatively straightforward investment products.

It is particularly worrying that the FCA is also proposing to amend the rule to make it clear that firms do not always need to assess a customer's knowledge and experience before making a recommendation in cases where the type of product that the firm envisages recommending is one which the firm has reasonably identified as having a target market that includes clients with no experience of investing.

Even comparatively 'simple' investment products eg. tracker funds require an understanding of the market, timing, and longevity risks involved. We cannot think that the FCA actually intends that firms selling investment products **should not** have to at least try to establish the target-consumer's basic knowledge and understanding of how investment products work and how different they are to the lowest risk products.

In para 2.36, the FCA states that: *'Customers should be able to make informed decisions about relevant products and services so they can evaluate their options by assessing the benefits, risks and costs. We propose to add Handbook guidance clarifying that a firm should always provide information that supports a client's understanding of a service or product recommended. This emphasises the consumer understanding outcome under the Consumer Duty. We also propose to make clear that where an assessment of knowledge is required, firms can educate and increase a client's knowledge as part of that process.'*

This is a worrying shift in emphasis on the part of the FCA. We had hoped that the Consumer Duty 'Understanding' outcome was intended to ensure that firms understood consumers. Now, the emphasis is on consumers taking steps to understand the potential consequences of selecting different products. This is part of what appears to be a concerted effort on the part of the government and FCA to shift responsibility for outcomes from the market to consumers. And, of course, if the boundary of regulation is moved, this has implications for consumer protection and rights to redress.

**Question 5: Do you agree with our proposal to simplify the terminology and expectations when assessing the investment risk a client is willing to take?**

**Question 6: Do you agree with our proposals to clarify that a firm can take a proportionate approach to assessing a client's ability to bear losses?**

We have no issue with simplifying or standardising terminology. That is not the important matter. What matters is how different firms approach assessing investment risk and ability to bear losses. As with assessing suitability and consumer knowledge, it is difficult to see how the concept of proportionality in assessing attitudes to risk and capacity to bear losses can work in practice. As with suitability assessments above, we argue that the FCA will have to set down a minimum level approach for all firms to follow allowing firms to build on that if they so wish.

**Question 7: Do you agree: a. that we have appropriately defined the scope of situations in which firms are required to provide a suitability report? b. with our proposals to align the content requirements for different types of business? c. that clarifying that the content of suitability reports should be concise and proportionate to the nature and scope of advice**

**provided will give firms confidence to produce clearer and more consumer-focused reports? 39 d. that we should align the requirement to provide a suitability report before the transaction is concluded for all types of business (except where distance communication prevents this with consent)?**

We support the proposals that: in future, any firm providing advice relating to a financial instrument must provide a suitability report; to retire the current exception from the requirement to provide a suitability report in COBS 9 where the recommendation is to invest additional single premiums or single contributions to an existing packaged product to which a single premium or single contribution has previously been paid; and to make explicit the requirement that potential disadvantages be set out in suitability reports.

We do not see the logic in the proposal to remove the requirement for suitability reports for life policies and insurance-based investment products to explain why the recommendation best meets those client's demands and needs. As mentioned already, while we fully support consolidation, this should not be accompanied by consolidation at a lower level of standards. Instead, we would argue that it would be better if the requirement to explain why the recommendation best meets consumers needs applied to all products covered.

While we agree it makes sense that firms should not need to unnecessarily repeat information or risk warnings already clearly provided at the same time in other documents or as part of a layering approach, it is also important that the FCA makes it clear to firms that they should satisfy themselves that risk warnings are properly understood by consumers and, if necessary, repeated as many times as is necessary for the key messages to get through.

With regards to the templates, we agree that the FCA should not dictate at a very detailed level the structure and content of suitability reports. But, we would argue that the potential for inconsistent standards to emerge to the detriment of consumers, means that the FCA should set down minimum requirements on the structure and content of suitability report templates.

We fully support the proposal to replace the current disparate requirements with a single obligation to provide a suitability report before the relevant transaction is concluded for all types of business. We agree this better aligns with expectations under the Consumer Duty.

**Question 8: Do you agree with our proposal to remove the stated provisions and rely on the Consumer Duty? Are there any additional rules that you consider can be removed and reliance placed on the Consumer Duty?**

Unnecessary, superfluous rules and guidance benefit neither consumers nor firms. We fully support the principle of streamlining provisions where there is overlap, the specific requirements are covered elsewhere eg. on suitability, and the removal of provisions would not weaken consumer protection and rights.

Of course, more important is what those streamlined requirements expect of regulated firms. Streamlining provisions might benefit the industry but if the standards expected are reduced (as would be the case with the current proposals on suitability, assessing knowledge and attitudes to risk – see above) then this would just deliver consistency at a lower level.

Moreover, as outlined above, we consider that some of the new proposals would contradict the intention of the Consumer Duty eg. how can the Consumer Duty *ensure* consumer understanding if the FCA intends to give firms explicit permissions to gather limited information on consumers' knowledge and attitude to risk. Ensuring consumer understanding isn't just a question of the quality of information communicated to target-consumers. It also requires providers to understand the target-consumer's existing knowledge and attitudes before deciding on what information, and in what format, to communicate that information.

Furthermore, as the FCA rightly highlights, these proposals could potentially impact a consumer's ability to make a civil claim for damages through a private right of action (PROA), including the ability to make a claim to the Financial Services Compensation Scheme (FSCS) where a firm fails. The FCA points out that if a firm does not comply with a rule in the Conduct of Business Sourcebook (COBS) a customer is usually able to bring such a claim as breaches of FCA rules causing them a loss gives right to a PROA. Where a firm fails to comply with the Duty, the customer would not have these rights. The FCA would also not be able to impose an industry-wide consumer redress scheme in relation to breaches of the Duty under section 404 of FSMA.

The FCA takes the view that this should not harm consumers' interests as they would still be able to seek redress directly from the firm or through a FOS complaint. It considers the proposals to be proportionate options for redress and accountability where the Consumer Duty sets the relevant standard and does not expect these changes to result in a material reduction in consumer protection.

We strongly disagree with this argument. We still do not know how well the Consumer Duty is working in practice. We do not think the FCA is justified in risking the removal of an important plank of consumer protection in such untested conditions.

In certain cases, such as the one outlined above, overlaps can be justified if they retain important consumer protections. Moreover, if the FCA is arguing that the Consumer Duty expects the same standards of behaviours from firms as measures in COBS, then it follows logically that retaining those COBS measures would not in fact impose additional expectations on firms in practice. Streamlining rules and guidance for the sake of it while ditching key consumer protection measures does not make sense to us.

**Question 9: Do you agree with our proposal to retire FG17/8 and embed its principles of proportionality in the new rules?**

**Question 10: Are there specific scenarios that you would like to see addressed by case studies? Please outline proportionate approaches to assessing suitability in specific scenarios.**

We have no particular view on retiring FG17/18 *per se*. We are more concerned about how the principle of proportionality could work in practice. A proportionate approach by definition implies firms responding in a way that is proportionate to consumers' needs, capabilities and vulnerabilities, and circumstances. That requires firms understanding those needs, capabilities and vulnerabilities, and circumstances. Yet, firms will be allowed to gather limited meaningful and relevant information relating to a potential customer's circumstances before determining what product to sell to them. We find it difficult to see how firms could determine what response might be proportionate with the FCA's approach. We think many firms will struggle to use proportionality in the way the FCA intends.

Case studies can be helpful. But, as mentioned, it is more important that the FCA includes case studies on what is *not* acceptable alongside strong warnings that failure to comply with the spirit and in certain cases the letter of regulation will attract robust enforcement and sanctions.

The FCA should set down minimum requirements with regards to what constitutes a proportionate response in defined circumstances following further consultation with consumer groups and market testing.

**Question 11: Excluding qualifications and charging rules, are there any other regulatory changes we could make to facilitate the development of a market for more simplified forms of advice, or otherwise help consumers navigate their financial lives?**

Targeted support and now the proposals for simplified advice represent a weakening of consumer protection standards in an attempt to encourage the market to persuade more consumers to invest in higher risk, and higher cost investment type products. We would certainly not welcome yet further changes in this direction.

As mentioned, the FCA could have sought to achieve the intended goals of supporting consumers in making better financial decisions through more robust application of the Consumer Duty.<sup>6</sup>

The FCA is obviously not going to do that now given its direction of travel in supporting the government's finance sector growth and competitiveness objective. The issue now is whether the FCA will be able to supervise and enforce against abuses of this new regime and the impact on consumers' access to redress. NB. the moving of the regulatory boundary

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<sup>6</sup> For example, the basis of targeted support is that the FCA expects that firms will be able to use their data mining and modelling capabilities to identify groups of consumers who are at risk of making active or passive suboptimal decisions – eg. drawing down too much pension or retaining too high a proportion of assets in low return deposit accounts and then 'suggest' solutions to them (NB the FCA wants these suggestions to have the same effect on consumer behaviours as personal recommendations). The FCA is redrawing the regulatory boundary to encourage the market to adopt targeted support and, now, simplified advice. Yet, the FCA could have opted to apply the Consumer Duty more robustly to require firms to use the same data mining capacities to proactively identify customers at risk of making the same suboptimal decisions and recommend potential solutions. As the FCA states in para 3.18, 'The Consumer Duty requires firms to act to deliver good outcomes for retail consumers.' This is explained further in our submission to CP25/17 [FCA consultation CP25/17 on 'targeted support' | The Financial Inclusion Centre](#)

of responsibility towards consumers by definition must mean that firms are less likely to overstep that boundary and breach rules. Given that situation, it also means that firms' liability for redress will also be reduced especially as the ability of FOS to reach independent judgements on cases will also be curtailed due to the reforms of the redress system.<sup>7</sup>

**Question 12: Do you agree with our proposals to clarify our rules on provision and charging for ongoing services?**

We agree with the proposal to clarify that firms can offer and charge for services related to advice, whether or not they give a new personal recommendation on each occasion. However, this creates an obvious risk that firms could use this opportunity to charge fees for a fairly superficial ongoing service. We would welcome the FCA setting out clear guidance on what constitutes a minimum standard of ongoing service that would justify charging ongoing fees.

We appreciate that the FCA is opposed to product regulation (such as charge caps) as a means of making markets work preferring instead to try to create the conditions for competition to make markets work (even though product regulation has been shown to be the most effective consumer protection and value-producing intervention, and competition and disclosure/ transparency measures to be ineffective in key parts of the financial services industry). But, at some stage, the FCA is going to have to make some sort of judgment as to what is a fair charge for ongoing advice. It cannot realistically leave it to competition and consumer pressure to determine a fair and reasonable price.

**Question 13: Do you agree with our proposal to remove the annual suitability requirement for firms providing ongoing services in relation to business that falls under MiFID II or the IDD and to replace it with a requirement for firms that conduct periodic suitability assessments to do so in keeping with the Consumer Duty?**

**Question 14: Should we consider further transparency requirements or guidance to mitigate the potential market impacts of the proposed rule change and ensure consumers understand the service and receive fair value?**

It is not clear why the FCA would think that firms purporting to offer professional services in a critical area such as financial services should not be expected to provide some sort of review on an annual basis. This need not necessarily be a full review of a customer's overall financial position with specific recommendations. But, it should at least be a meaningful overview-analysis of customers' circumstances to proactively identify possible issues and to determine whether a more extensive review is needed. After all, as explained, the basis of targeted support is that firms will be able to use their data mining capabilities to identify large groups of consumers who may be suitable for a 'suggestion'. Surely, firms should be expected to use the same data mining capabilities to screen their existing customer bases on an annual basis.

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<sup>7</sup> The proposed reforms will restrict the ability of FOS to make decisions independently of the FCA so undermine a critical part of the UK's tripartite system of regulation. See FIMC's response to CP25/22 and CP26/9.

It is not at all clear why the FCA believes that further transparency measures would mitigate the potential negative impacts of these proposals. Disclosure and transparency-related interventions do not have a good track record in protecting consumers or making markets work in financial services. Mitigating the risk of potentially negative consequences will require direct, robust supervision and the threat of sanctions.

**Question 15: Do you agree with our proposal to include Handbook guidance to clarify our expectations about firms' compliance with the Consumer Duty when handling disengaged clients? If not, please explain why and any other options we should consider.**

**Question 16: Do you agree that we should work with industry to publish examples of good and poor practice to support firms in complying with Consumer Duty standards in the context of disengaged clients? If so, please provide examples around the topics set out above.**

We do agree with the proposal to include guidance on this matter. It is not clear why the regulator intends to work with just the industry on this. Industry representatives are not necessarily objective on these matters. This is not a criticism, it is just a realistic appraisal of the motives of industry representatives. For profit providers have a duty to maximise shareholder value and trade bodies are there to lobby for the most favourable conditions for the firms they represent.

The FCA should work with consumer representatives on matters such as this. Moreover, the FCA should be more decisive in setting out expectations for regulated firms on this matter and others. For example, it should specify the conditions that would require firms to stop charging disengaged clients. It should also specify the minimum levels of ongoing service that would allow firms to continue to levy charges on clients.

**Question 17: Should the FCA consider changes to our rules on legacy trail commission? If so, should this be done via enhanced transparency, a sunset date, a transitional period, or any other option?**

**Question 18: Do you have any views on the likely impact on consumers and firms that pay and receive trail commission? Can you give us any specific details or estimates of the impact that these changes may have and the potential for consumer harm?**

We are pleased the FCA has raised concerns about legacy trail commission in this consultation. We share concerns that consumers are paying large sums of money in aggregate in return for no or very little service. Legacy trail commission in certain cases could be characterised as a form of rent extraction. So, we do agree that it should be addressed. But, the FCA quite rightly points out that interventions could have unintended consequences for those consumers. Moreover, the FCA may be limited in what it can do due to the threat of legal challenge from advisers still receiving legacy commission.

Unfortunately, we are not in a position to be of much help here until further data is gathered on the profile of consumers paying legacy trail commission and the nature of the products to which it is attached.

We would like to take this opportunity to point out the data on revenues and fees in Figure 2. Even though revenue from commission has indeed fallen, revenue from fees and charges has risen considerably. Reading from the chart, we estimate that total revenues have risen at a rate of 7% per annum, while revenues from fees and charges grew at 15.8% per annum. By way of comparison, the inflation rate as measured by the Bank of England's inflation calculator was 2.8% per annum over the same period.

Presumably, some of this increase in fees and charges will be linked to a rise in asset values over the period and have little to do with the sector adding real value. For example, we estimate that the FTSE All Share Index produced a total return (before charges) of 9.5% per annum from the end of 2013 to end 2024, and a simple benchmark 50/50 Gilts/ equities portfolio produced 5.8% per annum.

Whatever the cause of the significant increase in fees and total revenues, questions should be asked as to why these have risen so quickly compared to inflation. The FCA, along with The Pensions Regulator is concerned with the concept of value for money at the moment. The FCA should explore this growth in revenues further to determine whether the significant increase in fees/charges generated is justified by the delivery of better value for consumers.

**Question 19: What value does this commission represent to operators of alternative investment products, distributors, and retail investors? What is the impact on firms, consumers and the market if these commissions were not allowed?**

Unfortunately, we do not have information to comment on this question.

**Question 20: Do you agree with our proposal to allow platforms to rebate commission received from alternative investment fund managers in the same circumstances as commission received from authorised fund managers?**

Yes, we agree.

**Question 21: Do you have a view on what would be appropriate suitability requirements for services provided to professional clients, including whether there is merit in differentiating by client type as well as the scope and nature of services provided as well as the nature of products recommended?**

With regards to this consultation, we would not differentiate between the suitability requirements relating to 'professional' and retail investors.

But, this issue warrants a much bigger discussion. We are concerned at how clients such as pension fund trustees and business owners are generally considered to be professional or sophisticated investors when often they clearly are not. They share many of the same characteristics as retail investors, so they are at risk from the same type of negative behaviours as retail investors – conflict of interests in the supply chain, mis-selling risks, product complexity and so on. Indeed, these investors tend to be responsible for much

larger sums of assets than retail investors; they can be responsible for the financial welfare of large numbers of people eg. pension scheme members and employees of a firm. So, the financial and other detriments arising from market behaviours can actually be greater than in the retail market. This is all the more concerning given the Government and FCA/TPR concerted efforts to drive more pension fund assets into complex, high risk, high cost poorly regulated and governed alternative private assets.

**Question 22: Do you agree with our assessment of the costs and benefits of these proposals? Please outline why you do or why you do not, sharing any evidence that may improve our assessment.**

**Question 23: Do you have any comments on our equality and diversity considerations?**

We appreciate the work the FCA has undertaken to produce the CBA. It provides very helpful data on various segments of the market. We agree with the descriptions of harm. However, we are not able to comment in detail on the CBA as we do not have access to the necessary data to do so.

As will be clear from our answers above, while we might agree with the analysis of harm, we do not agree with the key proposed interventions. We are not convinced that much of the market will respond in the way the FCA hopes. If the market does respond in the way the FCA hopes, this will create consumer detriment which could have been avoided. The package of interventions create risks as the boundary of regulation is being moved from firms to consumers. This will result in a weakening of consumer protection and access to redress.

More importantly, we believe the FCA could have pursued the same policy goals using different interventions but at lower risk to consumer wellbeing. As outlined above, the FCA could have chosen to apply the Consumer Duty more robustly to require firms to check whether customers are at risk of suboptimal decisions (active or passive) and investigated whether 'overserved' consumers are paying too much for advice.

**Financial Inclusion and Markets Centre (FIMC)**  
**May 2026**