Regulating the pensions and retirement income sector
Joint FCA & TPR call for input
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive summary

1.1 We welcome the opportunity to provide input into this consultation about an area which, owing to its complexity and obscurity, is unknown to most of the population. We are tax specialists, rather than overall pensions or regulatory experts, with a particular focus on the low paid. Nevertheless tax is a major, and very complex, aspect of pensions, and gives us a strong insight into the scope for vulnerable people to receive inadequate or unsuitable advice, in part because of incompetence, exploitation and sharp practice. We doubt that the current fragmented regulatory structure is sufficiently coherent and robust to address these issues. On this basis we have felt able to draw more wide ranging conclusions on the questions raised in the consultation.

1.2 It is a measure of this complexity that it should require eleven separate regulatory bodies to supervise one sector of the financial world, suggesting either a confusing fragmentation of controls or unnecessary overlap of duties and responsibilities.

1.3 Furthermore the cost of all these bodies is ultimately borne by the customer and a simpler unitary authority would cut costs as well as increase public understanding. The new Single Financial Guidance Body (SFGB) would be most suited to undertake that role.

1.4 In order to increase trust in pensions and consequently take-up, there must be clarity and reassurance that contributions and investments are in good hands and well-protected against incompetence and criminality.

1.5 Although auto-enrolment (AE) has widened the number of people who are saving into a pension, more should be done to demystify pensions and highlight the power of compound interest.

1.6 Importantly, there is a very real need for free or affordable sources of advice, not just guidance, for the large proportion of the population to whom pensions are a remote concept conducted in a foreign language. This need extends across the whole gamut, from starting to save into a pension through continuing adequate contributions up to the point of starting to draw on those savings.

1.7 In particular, when it comes to pension freedoms, the interaction with tax and benefits can have major and long-term effects, often unforeseen at the time of the decision, and those without professional representation can be hard-pressed to find the necessary information and knit it together to find the best course to take.

2 About Us

2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 General comments

3.1 As a charity with a professional interest in taxation affecting those on low incomes, we clearly also have an interest in pensions from start to finish for our constituency. Tax is a major part of contributing to a pension, investment growth, and treatment of retirement options at the decumulation stage.

3.2 On the other hand we have no special concern with the regulation of advisers or pension firms beyond trying to ensure that people on low incomes are protected from incompetence, dishonesty or sharp practice, as well as continuing to press for greater clarity of information and advice for a segment of the population whose literary and numeracy skills often fall well below those normally found within the industry itself.

3.3 We have seen many examples of poor advice where tax had been either ignored or misunderstood and the low-paid pensioner is out of pocket as a result, so our main focus is to ensure that proper (and qualified) consideration of the tax impact is essential at all stages.

3.4 We therefore approach this consultation from the consumer protection aspect and seek to answer or expand those questions relevant to that position.

4 Q1: FCA and TPR's remits intersect in some areas. Do you see this working effectively, or are there areas where this could be improved?

4.1 Our view of the regulation of the realm of pensions is that there are far too many different bodies involved, all of them overlapping in some way with one or more of the others.[1] For example, in the chart Diagram 1, why does the Financial Conduct Authority (FCA) regulate workplace pensions when they are contract-based defined contribution (DC) but The Pensions Regulator (TPR) oversees them if they are trust-based DC? In what way are pension scheme operators so different from public service scheme managers that they require different regulators? Why does the Prudential Regulation Authority (PRA) regulate banks and the FCA asset managers, when many banks are themselves asset managers? Is income drawdown as regulated by the FCA so totally different from drawdown arrangements from occupational pension schemes that the latter need a separate regulator?

4.2 Let us consider the following statement (at para 1.4 of the consultation document):

The FCA's focus has been on ensuring the appropriate levels of consumer protection and competition. For TPR, it has been on driving up standards of scheme governance. This includes ensuring schemes are actively managing funding risks, and making sure that employers are enrolling their staff into the pensions they are entitled to under AE.

4.3 Why are two bodies needed to undertake consumer protection, maintain standards of governance, keep an eye on operational risks and ensure that employers obey the law? These are all different aspects of one realm, the world of pensions. This paper is asking about the most effective way of regulating all parts of the pension scene, not about micro managing each different operation within it.

4.4 By way of an analogy, the Chief of the General Staff does not get involved in the individual specialities of every signaller, gunner, sapper, cook or radar technician in the army. He makes sure that they all operate to the highest possible standards within the rule of law and the policies of the Government. He does not need ten other Chiefs to do the same job for each separate regiment or corps. Likewise the FCA does not need ten other bodies to help it perform that task.

4.5 From the consumer perspective, this matters. In the first place unnecessary duplication and overlap means unnecessary expense. Although the consumer probably will not notice this

[1] The following are all mentioned in the document as having an iron in the fire. The Financial Conduct Authority, the Pensions Regulator, the Department for Work & Pensions, the Financial Services Compensation Scheme, HM Revenue & Customs, the Pension Protection Fund, the Pensions Ombudsman, HM Treasury, the Prudential Regulation Authority, the Financial Ombudsman Service, the Pensions Advisory Service and the Money Advice Service.

directly, nevertheless all costs ultimately are paid for by customers. Industry levies and Government subsidies do not come out of the pockets of pension scheme managers or Government Ministers; they are all derived from customer contributions and taxes. That inevitably means a smaller amount is invested or available to invest.

4.6 Secondly, the complexities inherent in there being such a multiplicity of bodies with overlapping regulatory functions is an immediate turn-off for the puzzled or undecided. The Government aim is for everyone to take a much greater part in saving for their retirement and old age – hence auto-enrolment (AE), amongst other measures. AE has worked (so far) much better than expected, partly because of simplicity; the saver literally has to do nothing. The more complicated and jargon-infested the process, the harder it is to engage the customer in something which they do not really trust or understand. In the DWP's own words:[2]

Individuals are beginning to save but for multiple reasons do not actively engage with their pensions. The barriers to engagement with workplace pension saving that led to the introduction of automatic enrolment remain and engagement alone will not address pension participation and savings challenges. ***However, improving awareness and understanding by delivering the right support in a simple way complements the role of automatic enrolment and provides a better platform for voluntary saving and helps to build trust and confidence in the system.*** *(Our highlighting.)*

4.7 Conversely in the words of a Financial Advice Market Review research document[3] (at para 5.3):

Distrust of the industry, across pensions and investments, can also stop inactive participants engaging. Pension scandals, potential scams, and a genuine fear of losing hard earned money, act as a strong disincentive to save within a pension or investment vehicle. This distrust often extends to perceptions around financial advisers.

"I don't have a very good opinion of the financial services industry; I had a pension that Robert Maxwell ruined" (Inactive investor)

"I don't want to give my money to anyone else. You see on the news places like BHS and pension providers going bust and all the money you've saved being gone with no one, not even the government helping you" (Inactive pension accumulator)

4.8 The fact that an 'inactive pension accumulator' is referred to above, helps illustrate the point. Accumulator and decumulator are terms of art largely unknown outside the industry. In writing for a layman we would instead have talked about saving into a pension scheme or deciding what to do about drawing on one's pension savings. (Incidentally, we observe that

[2] Automatic enrolment review 2017: maintaining the momentum: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/668971/automatic-enrolment-review-2017-maintaining-the-momentum.PDF

[3] https://www.fca.org.uk/publication/research/famr-consumer-research-nmg-consulting.pdf

none of the regulatory agencies on our list had made much impact on the mind and understanding of the inactive pension accumulator.)

4.9 Thus there is an urgent need to simplify the structure and make it easily understood by the consumer. We would recommend that a unified regulatory body for the entire pensions world be incorporated into the FCA with a single entry point for outsiders whatever their problem (along with an effective internal case management system) – this would ease a person's task of navigating the different bodies. (That does not mean that industry and pension professionals should be restricted to that route. They should be quite competent to approach the relevant section within the regulator directly.) It would probably be desirable for an appeals route to be located independently of the rest of the structure to emphasise impartiality, but an ombudsman is not part of a regulatory regime in any case.

4.10 Given the wide remit and responsibilities being given to the new SFGB in the Act recently passed through Parliament and also that the SFGB is being promoted as an all-encompassing consumer body in a user-friendly form, it would seem desirable that the SFGB should be that entry point for the public.

4.11 It would keep the information, advice and regulatory functions together under one virtual roof within a body answerable to the FCA. We note, for instance, that one amendment to the Bill as it passed through Parliament proposed that the SFGB have strengthened powers to report non-compliant FCA-regulated firms to the FCA, while another recommended that the "Cridland" mid-life review be part its role. These multifarious and variegated functions all point to the need for a unified body to maintain coherence across pensions.

5 Q2: Do you agree that the areas we have identified are the right ones? If not, which themes would you add or remove from our list? In which areas could the FCA and TPR singly or jointly have the most impact?

5.1 There are four major issues to tackle with pensions.

1) Getting someone to start one

2) Getting them to make adequate contributions

3) Keeping them contributing throughout their working life

4) Making the right decisions about withdrawing pension savings.

5.2 On the first bullet point, in general, there is still an unhelpful perception that pensions are complex, mysterious and for the wealthy. Put simply, many people just do not think pensions are for them.

5.3 However, as AE demonstrates, if it is simple and easy to start saving for a pension, then most of the battle is won. The FCA and TPR's (joint) role is to make it simple and easy. This means not merely making the actual process straightforward but also ensuring that all terms and conditions, caveats, possible risks and outcomes, etc. are presented in plain English, which will encourage the trust of the customer and enable them to see the benefits clearly (along with any commitments).

5.4 Two years ago the Association of British Insurers (ABI) put out a consultation and subsequent response on Making Retirement Choices Clear.[4] Sadly, implementation of simpler language about retirement options is still not mandatory or consistent across the industry, so Tax Help for Older People[5] continues to see correspondence and wake-up packs from pension companies written in impenetrable English and industry jargon. Perhaps the FCA would care to take a stand on this point.

5.5 On the second bullet, there should be a widespread and continuous campaign to bring home to laypeople the benefits of starting contributions early – the power of compound interest – and the need to amass a significant pot in order to live an adequate lifestyle when their only other source of income will be a somewhat minimal state pension.

5.6 This needs to include 'real world' worked examples to help drive the compound interest point home and to capture people's imaginations – for example (and roughly speaking) two years' worth of minimum contributions under AE for someone on a salary of £11,500 (costing the employee around £500 in total – or less if they are in a relief at source scheme where they get tax relief), translates into over £10,000 of savings upon retirement (even with no further contributions and assuming a fairly conservative 5% rate of return) – food for thought, no doubt.

5.7 In designing any such campaign, the assumption should be that the numeracy skills of the population are generally much the same as their literary skills,[6] thus an approach that is tailored to the sophisticated end of the spectrum will not work. The much longed-for pensions dashboard would be one suitable tool for such communications, however ideally there would be a multi-pronged line of attack. Awareness and education would be an obvious area of interest to an overarching pensions body like the SFGB and we would be pleased to offer our ideas and assistance, as required.

5.8 The third bullet, cognate to the second, requires flexibility and simplicity in varying contributions over a person's working life and ease of transferring between schemes. Fortunately the dire days of making pension plans "paid-up" on ceasing contributions or changing jobs are generally behind us. Given the modern average of nine jobs in a working **life**[7] and the undulating demands on an individual's income as they start a family, get

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[4] https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/2016/pensions/making-retirement-choices-clear.pdf

[5] www.taxvol.org.uk Tax Help for Older People is a charity which provides pro bono tax advice to older people who would not normally be able to afford professional fees.

[6] '18 million adults lack the number **skills** to manage their money': https://www.nationalnumeracy.org.uk/

[7] www.lv.com/about-us/press/article/job-for-life Nov 2014

promotion or buy a house, this is an area where appropriate regulation could lubricate the system.

5.9 The fourth bullet highlights the need for easy and free or at least affordable access to impartial and expert advice, not just guidance, at the pension withdrawal stage. As we observed in our recent submission to the Household Finances enquiry question 'Are retiring households receiving adequate and appropriate financial advice following the implementation of pension freedoms?':[8]

The consequences of not fully understanding the implications of your actions can be seen in the real-life case study of Bill.

Bill is a man of limited means but had worked hard to build up a pension pot of £40,000. Upon his retirement, he withdrew his entire pension pot. Bill brought a new car for £20k (which he admits he does not really need) and put the remaining £20k in an ISA which he plans to drawdown in his remaining years.

Although Bill received some pension freedoms guidance from the Citizens Advice Bureau (who help Pension Wise deliver face-to-face guidance), his hasty decision has cost him heavily in the form of an unnecessary tax charge and the withdrawal of his Council Tax benefit. All the while his savings were in his pension, they were not reckoned as capital for means-tested benefits (the £20k in his ISA now is) and 75% of Bill's £40,000 withdrawal is taxable as income on him – if he had taken it in stages, spread over a number of tax years he could have avoided paying so much tax.

6 Q3: Given our regulatory remits, what more, if anything, should the FCA and TPR do to support people as they start to save in a pension?

6.1 In the light of the words which we quote from the research report in para 4.6, we would suggest that the safeguards and protections provided by the Pension Protection Fund (PPF) and the Financial Services Compensation Scheme (FSCS) are explained with the greatest clarity to those about to start a pension as well as examining whether these protections against misconduct, incompetence and criminality could be extended to all schemes – the refusal of successive Governments to properly compensate Equitable Life policy holders stands out, as much as Maxwell, BHS & British Steel. A deeper sense of security for their savings would go a long way to overcome initial hesitancy. In such long-term investments, consumers need to know that their money will still be there in 30 or 40 years' time.

[8] https://www.litrg.org.uk/sites/default/files/180111-LITRG-response-Household-Finance-consultation-FINAL.pdf

7 Q4: Is there more scope for TPR/FCA working, either singly or jointly, in this area? To what extent should the emphasis be on collaboration with a wider group of bodies to improve the advice and services supplied to schemes (e.g. administrators, investment consultants)?

7.1 This should be one of the early tasks of the nascent SFGB. Simplifying and improving connections across the relevant bodies behind the scenes can only deliver a more efficient and economical service at the front line to the consumer. See also our answer to Q6 below.

8 Q5: How can pension providers and schemes, employers and other firms in the sector improve the security of the money and data they hold? What role is there for FCA and TPR in further driving up standards?

8.1 No comment.

9 Q6: Are there any further opportunities for FCA and TPR to support the delivery of value for money, either singly or together?

9.1 No further comment beyond the point we made at the beginning, about the unnecessary expense of maintaining such a large array of separate agencies involved in the regulation and support of the world of pensions. Any reduction in the costs of the superstructure must mean better value for money for the consumer.

10 Q7: How can FCA and TPR work, singly or together, to ensure that information and advice helps people make appropriate decisions? When are people most vulnerable to taking poor decisions?

10.1 This is the area in which we have our greatest concerns. At present the only reliable advice available for someone starting pension saving is through an Independent Financial Adviser (IFA), a fee-paying route. Often fees for such advice are prohibitive (indeed, we find it troubling that fees are often lower for those with substantial money to invest[9]) – and different charging options can be confusing and opaque to those new to the market. There is no free regulated advice on what sort of pension to launch – how much to contribute, what sort of fund to invest in, or realistic targets. The Government has also recently muddied the waters by offering the Lifetime ISA as a possible retirement savings vehicle.[10]

[9] For example, it is not unusual to find fees for initial advice based on 3% for a sub £100k investment, say, yet 0.75% for an investment over 500k!

[10] For some of the major considerations against using LISAs to replace pensions, see our response to the FCA consultation at https://www.litrg.org.uk/latest-news/submissions/170124-handbook-changes-reflect-introduction-lifetime-isa

10.2 At the other end, someone wondering how or when to crystallise their pot(s) has no access to free or inexpensive advice on pension freedoms either. (Let us not even pretend that 60 minutes with an unqualified Pension Wise "adviser" is anything more than a quick spin around the options available under pension freedoms.)[11] Going to an IFA for a full fact find, analysis of needs and expectations, etc. and search for optimum solutions(s) is likely to cost at least four figures, a disproportionate sum for someone with a typical pot of £20/30,000. We have indeed heard many reports of IFAs refusing to take on clients with under £50,000 or even more.

10.3 We have previously[12] put forward the recommendation that the financial services industry should support their own charity to provide free professional advice to people on low incomes along the lines of the frontline tax charities, Tax Help for Older People[13] and TaxAid.[14] This would plug the gap in both the existing and proposed future models of financial guidance which only offer guidance, robo-advice, websites and telephone helplines, none of which is a substitute for detailed face-to-face advice from a qualified and regulated source.

10.4 This is an area where the FCA and TPR should be concentrating their efforts – to persuade those in the financial services industry to engage and share a few hours of their time with the low-paid and vulnerable. The tax models have been working well for over 25 years; they would willingly share their experience to avoid re-inventing wheels. In particular, we are aware that some IFAs feel very strongly about the fact that younger people often go without advice due to price alone when it would likely be to their advantage to have ongoing advice well before retirement, so signing up volunteers may not be such a huge undertaking.

10.5 The consultation document asks when are people the most vulnerable to making poor decisions. The clear answer is when they are making decisions which will affect them and their families for the rest of their lives in an area where they have no experience, no knowledge and lack the skills to compensate for that. Web chat, online calculators, generalities and flowcharts cannot substitute for a knowledgeable and properly trained human being asking the right questions and pursuing answers to a logical conclusion.

10.6 As we observed in our PFG response:[15] *The sign beside a river saying Danger, Deep Water, is of limited value depending whether the reader is a six-footer facing four foot of water but a non-swimmer and a three-footer who swims like a fish. Nor does it distinguish the level of*

[11] See our comments on qualifications in https://www.litrg.org.uk/latest-news/submissions/160928-pension-wise-standards-changes-secondary-annuity-markets-guidance

[12] https://www.litrg.org.uk/latest-news/submissions/151222-public-financial-guidance para 4.4 et seq.

[13] www.taxvol.org.uk Tax Help for Older people provides pro bono help and advice on tax to people of retirement age on modest incomes.

[14] www.taxaid.org.uk TaxAid provides a parallel service to people of working age.

[15] https://www.litrg.org.uk/latest-news/submissions/151222-public-financial-guidance para 4.7

danger depending on the temperatures of the water or the local currents. Likewise online calculators will only provide a possible answer depending on the information put in. Can, for instance, a booklet or online system advise you whether you are eligible for an impaired life annuity? Or if you are, whether you might still do better to leave your about-to-be bereaved spouse a tax-free drawdown fund?

10.7 Poor pension decisions are not only usually irreversible but also usually impossible to repair once the person has left the workforce. We therefore strongly recommend that the FCA and TPR give this proposal serious attention.

11 Q8: Do you believe that the macro trends that we have identified are those most likely to drive change across the pensions and retirement sector? If not, what are the trends that matter? Which trends should be the highest priority for TPR and FCA? How will those trends (and any other drivers of future risks and opportunities) affect the areas we have identified?

11.1 No comment.

LITRG
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