Retirement reforms and the Guidance Guarantee
Financial Conduct Authority (FCA) consultation
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary and Recommendations

1.1 The key to success of the Freedom and Choice in Pensions reforms is people understanding their choices, and weighing up in full their own and family circumstances in order to fund their retirement needs adequately. A face-to-face and holistic **advice** service is the only means, in our view, of properly assisting people with one of the most important decisions in their life.

1.2 We are therefore concerned that the proposals for the guidance guarantee service overestimate people's financial capability and underestimates individuals' needs. We believe that many of those facing the choice of what to do with their pension savings will need far more handholding than the service may offer, given that the government anticipates many will be expected to self-serve (for example through web-based guidance).

1.3 We do not think it matters that this service will be branded as offering **guidance** only, as many may nevertheless construe the output as **advice**. The delivery partners will therefore have a considerable duty of care towards consumers and we therefore include in this response recommendations as to how to make the service more robust than proposed in the consultation document. For example, we raise serious concerns about the short timescale for implementation of the service and the ability for it to be put in place in time with adequate and fully trained staff. We recommend much tighter regulation of the service by the FCA than is proposed.

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1.4 We are also concerned that there are no plans to standardise various communications with consumers from the outset (although it is mooted that standardisation might be something to strive for in future). Consistency is key, otherwise consumers will simply be confused, rather than properly guided through the new pensions landscape.

1.5 We raise serious concerns that the tax aspects of pension choices will not be fully covered by the new service, and that the delivery partners are unlikely to be sufficiently skilled in tax matters to give proper guidance. Tax concerns include: quantification of potential liability; timing of pension withdrawals; and how tax will be deducted/paid (or reclaimed if necessary). We will be aiming to take up separately with HM Revenue & Customs (HMRC) some practical impacts of the reforms concerning the operation of Pay As You Earn (PAYE) and self-assessment (SA), but here recommend that the FCA and delivery partners consult closely with HMRC and interested (tax expert) parties such as ourselves on the tax aspects of the service.

1.6 Some of our comments may be more for HM Treasury to consider in the design and implementation stages of the service. If the FCA feel this to be the case, we trust that our comments will be duly passed on to the Treasury team dealing with the matter, as the Government response gives no means of providing further input into the design of the system.

1.7 Our specific recommendations are highlighted in bold throughout this response, rather than repeating them here.

2 About Us

2.1 The Low Incomes Tax Reform Group (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 HM Revenue & Customs (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 Introduction and general comments

3.1 *Tax-related focus of this response*

3.1.1 This response focuses primarily on the tax implications of pension options under the new regime and how to ensure that people are well informed of the tax consequences of the choices they make. We also pass comment on various general issues, particularly related to people on low incomes, such as accessibility and oversight of the service.

3.1.2 Whilst we are pleased to see that tax is mentioned in the consultation document at various junctures, we highlight various areas in which the importance of tax issues needs to be stressed. Also, it is disappointing that HMRC have apparently not been consulted in developing the proposed standards (whereas the Department for Work and Pensions (DWP) and The Pensions Regulator (TPR) are both referred to at paragraph 1.5 of the document). It would be surprising if the FCA had not engaged with HMRC[1].

3.1.3 HMRC consult regularly with the pensions industry and other relevant stakeholders via their Pensions Industry Stakeholder Forum, which meets twice a year. The consultation document comments in a number of places that matters are to be kept under review as new retirement income products are developed and the Guidance Guarantee services start to be delivered. **From a tax perspective, we recommend that the FCA engage with HMRC – perhaps by becoming a stakeholder in their Pensions Industry Stakeholder forum – to help them meet this objective of ongoing review.**

3.1.4 HMRC need to be consulted as the new rules start to take effect, to ensure that people are informed of the tax consequences of their retirement income choices. Failure to deliver clear and correct guidance is likely to create additional burdens on HMRC in the form of contact from ill-informed taxpayers. For the taxpayers themselves, there could be consequences – for example, failure to understand how their retirement income will be taxed and what their obligations are.

3.1.5 **We strongly recommend that the suggested 'descriptions' of tax implications of retirement income options include clear information not just on whether or not sums are taxable, but also *how* and *when* tax is to be collected thereon.** Retirees will need to know whether PAYE applies; or whether a SA tax return is required; or perhaps even if both a deduction will be made under PAYE but a subsequent SA obligation arises due to higher rates of income tax being applied. Similarly, they will need to know if the PAYE system when applied to their

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[1] Perhaps this is simply not explicit in the FCA consultation document. We note that the Government response to the 'freedom and choice in pensions' consultation does mention working with HMRC (paragraph 1.13) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf

payments might result in excessive tax deductions and then whether (and how) they will need to claim repayment.

3.1.6 A great many consumers will simply not understand their pensions and how they are taxed, or if they are taxable at all. Indeed, pensioners often do not know the state pension itself is taxable, let alone the complex fashion in which it is taxed[1]. **We recommend that the guidance from all delivery partners must cover the fundamentals of taxation of the state pension – including how (relative to the pensioner's individual circumstances) it will be taxed.**

3.1.7 If we are to avoid the complications for retirees hitherto prevalent in the tax system[2], clear information is required at the outset. We are therefore concerned that delivery partners and pension providers may be left to a large degree to interpret FCA guidance in terms of the tax information they provide.

3.2 ***State benefits***

3.2.1 We are concerned that the advisers within the delivery partners' organisations are unlikely to have sufficient knowledge of the impact of their guidance on the state benefits entitlement of the consumer. Even the state pension is not straightforward, with the possibility of deferring a claim to it (and consequent tax impacts for the individual, with state pension deferral having its own, peculiar regime).

3.2.2 **We recommend (indeed it is essential) that consideration is given to both adequate training on state benefits matters of those delivering the guidance, and to the impact (and suitable funding to account for increased referrals) on the organisations to whom consumers are signposted for further advice.** In terms of the first point, without adequate training for themselves, advisers will not know when to signpost a consumer to additional advice, nor give them adequate guidance on what points they will need to be assisted further. It will be unhelpful to the organisations to which they have been referred if the consumer contacts them saying 'The pensions guidance guarantee service said I should contact you' – clearly it would be better if the consumer were guided to make contact saying 'The pensions guidance guarantee service said I should ask you for help in considering my options concerning state pension deferral'.

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[1] Usually by adjustment to the pensioner's PAYE Code(s) for other pension sources, rather than the DWP deducting tax directly from it.

[2] The problems are well documented. See LITRG's past reports, the last of which was dated 30 May 2007 and entitled 'Older people on low incomes – The case for tax reform' – http://www.litrg.org.uk/reports/2007/older-people-on-low-incomes-the-case-for-tax-reform, following which we input into the Office of Tax Simplification's Taxation of Pensioners Review - https://www.gov.uk/government/publications/taxation-of-pensioners-review

3.3 ***Accessing the guidance guarantee***

3.3.1 We are not sure from the FCA consultation document how consumers will access the guidance guarantee. We assume that there will be a central telephone line for the guidance service, from which the consumer will be directed to one of the delivery partners? If it is the case that a central helpline will pass the consumer to one of the delivery partners (of which there will be at least two that we know of – The Pensions Advisory Service (TPAS) and the Money Advice Service (MAS)), this raises various questions – particularly if a consumer uses the service more than once but is referred to a different delivery partner on each occasion. We comment more on this below.

3.3.2 Our comments and recommendations are made in the spirit of being constructive, as we wish this service to help low-income pensioners. Any failings of the service will undermine its credibility, breed mistrust, reduce take-up and ultimately result in pensioners receiving poor value for money from their retirement pots or even unwittingly triggering large and unnecessary tax liabilities and reporting obligations.

3.4 ***Equality and diversity considerations***

3.4.1 We note from paragraph 1.28 of the consultation document that the FCA believes there are no concerns stemming from these proposals for particular groups as a result of any protected characteristic, but that comments are invited.

3.4.2 We do have concerns from an equality perspective, primarily relating to the means by which retirees will access the guaranteed guidance. With respect, **we recommend that the FCA share their equality impact assessment which concludes that there are no such impacts.**

3.4.3 In answer to question one (sub-heading 'delivering the guidance'), we raise concerns about the availability of face-to-face appointments through the service. For some people considering retirement, disability and/or ill-health will be a factor. This will affect not only their retirement income choices, but also their ability to access the guidance. Home visits to the prospective pensioner by the delivery partners might, for example, be necessary.

3.4.4 We are also concerned that delivery partners, due to cost considerations of delivering the service, will try primarily to direct consumers to website guidance and services, rather than to telephone and face-to-face help. **We therefore recommend that the delivery partners are obliged to make the availability of the direct forms of service known and available to all, but especially those who might be 'digitally excluded' due to age or disability[1].**

3.4.5 The incidence of digital exclusion amongst the older population is likely to be high, and may be exacerbated for those taking their retirement funds in stages (once people have moved

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[1] The Tax Tribunal recently ruled that HMRC had breached taxpayers' human rights for failing to allow non-digital means of filing VAT returns, and for obfuscating the existence of their telephone-filing service: *LH Bishop Electrical Co Ltd A F Sheldon (t/a Aztec Distributors) v Revenue & Customs [2013]* http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html

from the workplace where they might have used their employers' IT equipment and support systems, but are then left without such provision and support). And even before retirement when they are considering their options, it is worth remembering that a great many employees will be barred from using their employers' IT equipment for personal purposes and may not have a computer at home to research their options.

3.4.6 We comment further on various matters in terms of dealing with vulnerable customers in answer to the questions below – for instance, the need to ensure that delivery partners are required to have systems in place to deal with third parties on the consumer's behalf in appropriate circumstances.

3.5 ***The proposed levy***

3.5.1 The consultation questions (2, 3, 4 and 5) regarding the operation of the levy to fund the Guidance Guarantee are outside of LITRG's remit.

3.6 ***Timescale for implementation of the service***

3.6.1 We are extremely concerned at the short timescale for implementation of this service. Given that the reforms are coming in from April 2015, the service needs to be fully designed, tested and running by then. **We recommend that the detail is consulted on as it continues to be developed, and we offer to meet with the FCA, HM Treasury team and other relevant parties to input further.**

3.6.2 We would not want to see those first using the service in April next year being used as 'guinea pigs' for a system still under development, which we very much fear it will be – particularly as the FCA have acknowledged in this consultation paper that certain aspects of its delivery will not be standardised at the outset, but this is something to work towards as experience of it develops. What redress will those people have who may have received a sub-standard service while the guarantee is in its infancy? This reinforces our comments under 'complaints management' below that there is a need for an insured fund for anyone with a legitimate claim for compensation if they have been inadequately guided or misled by the service.

4 Q1: Do you have any comments on the proposed standards for the delivery partners?

4.1 ***General points***

4.1.1 Tax is a complicated subject, particularly when it comes to retirement options, but our reading of the FCA's consultation proposals is that it will be left to pension providers and delivery partners to interpret what 'tax information' they provide. If only standard/general tax information is given, not tailored to the individual's circumstances, it is unlikely to assist people in truly understanding their situation and the potential tax consequences of decisions made on retirement.

4.1.2 There are various elements to tax advice, one of which is neglected altogether in the existing MAS booklet 'Your pension: it's time to choose'[1]. First, there is the consideration of whether income is taxable (and if so how much tax will the consumer pay on it); second, there is the issue of how tax is collected (PAYE/SA and when obligations to report might arise). The MAS booklet makes no mention at all of the latter.

4.1.3 There is also a third tax issue relating to both how much tax is payable and how or when the tax is to be paid, and that is timing. When drawing pension income, it is essential to consider when best to do so – for example, we have seen cases in which a trivial commutation lump sum has been taken in the year in which a person ceased work, costing additional tax; whereas waiting another few weeks to the new tax year might have resulted in no tax liability at all. We have seen Independent Financial Advisers recommend such courses of action without regard to these tax consequences.

4.1.4 Given the earlier acknowledgement in the consultation document as to the importance of tax, it is disappointing there is no mention of tax considerations in the proposed standards. Tax is, however, mentioned in the 'consumer journey' section, which seems to expand on the standards. **We would recommend two things:**

- **That tax (all aspects thereof, as noted in 4.1.2 and 4.1.3 above) is mentioned in the standards themselves; and**
- **That the helpful expansion of the standards set out in the form of the 'consumer journey' is appended to the final standards, such that it is clear that the FCA minimum expectations set out within it form part and parcel of the standards.**

4.1.5 We now comment on various individual parts of the standards.

4.2 *Free at point of delivery*

4.2.1 It is clear that the intention is for some consumers to be able to be 'guided' via the guarantee either online or via telephone, without the need for face-to-face services. For many, we doubt that this will be practical to give full and proper consideration of their financial means, capability and circumstances.

4.2.2 However, if some consumers are content to engage in that way, and the guidance session is delivered over the telephone, the rules for delivery partners must be clear that, in order to meet the commitment to being 'free at the point of delivery', consumers must not incur call charges.

4.2.3 For instance, the MAS currently offers '03…' telephone lines to access their services (with the exception of Scotland, which has a '0808' line – normally free of charge from landlines but potentially chargeable from mobiles). Numbers with a '03' prefix are only free of charge if the consumer has a call package which includes them; but these may well be chargeable, and indeed costly if holding on for very long – if, for example, a person telephones during

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[1] https://www.moneyadviceservice.org.uk/en/articles/free-printed-guides

the day and they either do not have an inclusive call package or it covers only evenings and weekends[1].

4.2.4 **To ensure the service is truly 'free at the point of delivery', we recommend that delivery partners are required to telephone the consumer for the guidance session or alternatively offer a Freephone line (whether phoning from mobile or landline) for the consumer to call at the time of their appointment.**

4.2.5 **We also recommend that there should also be a commitment to making the telephone line available at evenings and weekends** (for example, the MAS line is open 8am to 8pm during the week and Saturday mornings).

4.3 ***Delivering the guidance***

4.3.1 We expand here on our above comments about delivery partners ensuring that face-to-face services are accessible to all. Consideration needs to be given to the individual's personal circumstances and ability to travel. Users of the service should not be expected to travel unreasonable distances (or even only short distances but which involve a tortuous journey via public transport, for instance).

4.3.2 We are concerned that the proposed delivery partners will not be able to deliver a sufficiently 'local' service, unless they work with others. For example, if someone living in Norfolk attempts to book online to access face-to-face services from the MAS[2], the dropdown menu for the 'East of England' gives only the following locations as possible options:

> Kettering, Rushden, Grays, Wellingborough, Market Harborough, Essex, South Ockendon, Tilbury

4.3.3 There is no option for 'East Anglia', therefore we can only conclude that the MAS has no presence at all in the whole of Norfolk, Suffolk and Cambridgeshire[3]. We do however note that the Government response[4] refers to possibly working with Citizens Advice and Age UK, so perhaps those organisations' extensive network of venues may be used in advice delivery.

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[11] See Ofcom's guidance on '03' numbers: http://ask.ofcom.org.uk/help/telephone/03number

[2] Via https://www.moneyadviceservice.org.uk/en/static/contact-us

[3] To further sample coverage of the MAS service, at random, we also checked for the nearest venue to someone living on the North Yorkshire coast. We found that a resident of Whitby would have to travel a minimum of 63 miles, to County Durham. Further, in the south west there is no coverage between St Austell and Exeter; and we noted that even in Exeter, face-to-face services are delivered in NHS premises which are some distance from the city centre and main transport links.

[4] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf

But we are concerned that all those organisations that are proposed to be involved in delivery of the service have limited capacity and the numbers of consumers seeking guidance under the new guarantee could overwhelm them (even if their staff were adequately trained to deliver the guidance, about which in itself we are concerned).

4.3.4 Perhaps **it is for the Government, and in particular HM Treasury** as the chosen body to follow through with design and implementation, **to ensure that the guidance is genuinely available on a face-to-face basis across the nation. We therefore recommend that the FCA feed back our comments to the relevant team.**

4.3.5 Even so, as part of the FCA standards in the present consultation, the draft states:

> 'The delivery partner must ensure that the consumer experience of the guidance is consistent and of good quality across the range of delivery channels.'

4.3.6 This standard should extend to the consumer's experience of organising a face-to-face appointment if so required, such that someone living in Norwich should not be expected to make their way to Kettering[1]! **If the delivery partner with which the consumer is in contact cannot deliver a face-to-face service sufficiently local to the consumer, we recommend that the standards include a requirement for them to pass that individual to another partner that can provide the service they need.** Furthermore, this should be on a 'warm handover' basis, so that if the first delivery partner has started to gather information from the consumer, they should pass those details to the referee delivery partner to give them the best possible experience of the service.

4.4 ***Communications***

4.4.1 Saying that '[t]he delivery partner must have due regard to the needs of the consumers using the service…' is not entirely clear whether it means a general requirement to consider the needs of the pensioner population, or whether it must be specific to the individual's needs. **We recommend inserting the word 'individual' such that the standard reads: '… have due regard to the needs of the <u>individual</u> consumers using the service…'.**

4.4.2 We noted equality concerns above. The delivery partners must ensure that they are able to meet individuals' requirements, including the following (but this list is not exhaustive): Braille, large print, easy read (for those with learning difficulties, for example), sign language, interpreter services, Welsh language. **We therefore recommend that these equality matters are dealt with explicitly in the standards.**

[1] Some 107 miles.

4.5 ***Systems and controls***

4.5.1 **We recommend that this standard is amended to say something of how long the delivery partner is expected to keep records of guidance sessions (and produce copies thereof, if requested by the consumer or an agent the consumer has instructed to assist them).**

4.5.2 We suggest at various points in this response that delivery partners might need to share consumer information between themselves – for instance, if a person uses the guidance service more than once but via different delivery partners. It would be far less time-consuming for all concerned if the second guidance session can be carried out by simply reviewing and updating the background obtained the first time. Systems and controls must allow for this possibility.

4.5.3 Whilst data protection is of course essential, and a legal obligation, delivery partners will need to have a system in place which allows third parties to contact them on behalf of the consumer. For example, if the consumer himself is unwell or has a disability, he might require the assistance of friends, family or another third party and it may well be appropriate to disclose information to that person, subject to appropriate consent. In this area, HMRC have recently been working on their methods of third party consent, including a means of 'implied consent' for those who are seeking to assist another but where there is no formal attorney or similar in place. **Rather than developing separate processes, we recommend that the FCA and delivery partners consult with HMRC to learn from existing experience in dealing with third parties.**

4.5.4 Also on the theme of authorisation and dealing with third parties, the consumer might take the guidance offered but then seek more detailed advice from another adviser such as a paid agent. In that situation, it would be important for delivery partners to ensure there are systems in place to receive authorisation from that agent and supply to them a copy of the guidance given to the consumer so that they can enlarge upon it.

4.5.5 **We therefore recommend that the FCA standards include a requirement to have appropriate third party authorisation systems in place.**

4.6 ***Complaint management***

4.6.1 There is a typographical error in this standard: ('guidence').

4.6.2 **In terms of the design of an adjudicator function, we recommend that the Treasury should learn from existing similar services, such as the Adjudicator's Office[1].**

4.6.3 **We also recommend that there is an insurance fund to cover situations where the guidance has been inadequate or potentially misleading.** Whilst we note of course that the description of the service is one of a *guidance* guarantee, rather than an advice guarantee, there is still the possibility of a person being misguided as a result of using the service; or

[1] See http://www.adjudicatorsoffice.gov.uk/

situations in which a claim for compensation could be envisaged, such as mistreatment of an individual with protected characteristics under equality law. There therefore needs to be funds available to cover legitimate claims that people have been misled or mistreated by the service.

4.7 ***Guidance input***

4.7.1 Rather than delivery partners individually interpreting the information-gathering requirements, **we would recommend that the guidance is delivered in a consistent format by first ensuring that the same information is gathered regardless of which delivery partner the consumer uses.**

4.7.2 If there is no standardisation of the service between the approved delivery partners, this makes it all the easier for 'unapproved' and unscrupulous third parties to infiltrate the system. **There needs to be a strong brand for the official service, and we recommend that this is backed up by a standard 'client questionnaire' process of gathering information – a checklist for the service user to complete in advance.**

4.7.3 The wording of this section (to 'agree the information… that will be requested **during** the guidance session' [emphasis added]) concerns us, suggesting as it does that the delivery partner will not attempt to gather and review information in advance of the actual session. We believe this will lead to a flawed and inefficient service.

4.7.4 Instead, the delivery partner should gather as much information as possible from the consumer *before* the guidance session and review it for correctness and completeness beforehand, advising if anything is missing. The danger in waiting to the meeting (or telephone session) itself is that the consumer will arrive with incorrect or incomplete information. **We therefore recommend a change in the standards to require delivery partners to gather information in advance of guidance sessions.**

4.7.5 But even with this requirement, if it becomes clear during a session that information is incorrect or incomplete, what will happen? The standards seem to be silent on this point. **We recommend that the FCA guidance makes absolutely clear that the delivery partner should suspend the guidance session, advise what other information is required, and reschedule for a later date; or otherwise give very strong warnings that the guidance they are providing may be inaccurate, being based on incomplete information.**

4.8 ***Content of the guidance session***

4.8.1 The wording of this standard is not clear that 'relevant information' from the consumer must take account of both existing circumstances and those which may be anticipated in future (both in terms of the consumer's plans and potential unforeseen circumstances). **We therefore recommend amendment of the fourth bullet as marked below:**

> **'Requests relevant information about the consumer's <u>*existing and future*</u> financial and personal circumstances…'**

4.8.2 There is no mention in the information-gathering parts of this standard that the consumer should be asked about their investment experience and attitude to risk, which are clearly relevant factors and must be understood in order to offer appropriate guidance. For instance, some people might still prefer the 'security' and 'simplicity' (even if not the best value) of an annuity type arrangement, as it provides a known income, little or no ongoing review and maintenance, and the relatively straightforward tax position of PAYE deductions. A guidance service which does not factor in whether a consumer is risk averse and prefers simple arrangements would be negligent. **We therefore recommend the standards are revised to include a requirement to ask about investment experience and attitude to risk.**

4.8.3 There has already been press coverage about pension providers imposing significant charges on those wishing to take advantage of the new rules from April 2015, particularly if they wish to access their pot before the normal retirement date. This is especially the case for pre-stakeholder pensions from which extensive commissions were paid out up-front and costed into the life of the policy. **We recommend the FCA standards state that when delivery partners discuss the relevant options with consumers, they need to make crystal clear any penalties or charges the consumer may incur.** Whilst the policy providers should themselves issue strong warnings to consumers of such charges, it is important that delivery partners ensure that consumers understand them.

4.8.4 **We also recommend that this section of the standards includes an obligation to cover tax issues.** For instance, in discussing relevant options, delivery partners must ensure that strong warnings are given about taking large amounts out of pensions and incurring a high up-front tax charge. They will also need to discuss timing of pension withdrawals and the consequent tax charges – for example, a consumer might be better to wait until the tax year after that in which they cease work (or perhaps move to part time work) to take withdrawals so as to achieve the best tax results.

4.9 ***Next steps***

4.9.1 Paragraph 2.11 of the consultation document says that the guidance service will provide 'key facts and information…, for example taxation'. This suggests that an overview of tax implications will be given, rather than any detailed quantification of potential liability. Indeed the delivery partners, presumably not being fully trained tax advisers, may not have the requisite skills to give full and proper tax advice. The words 'for example' seem to convey some element of choice on the part of the delivery partner. **We would much prefer that it is an obligation, so would urge that 'for example' is replaced with 'including'.**

4.9.2 **It is essential that consumers are signposted to sources of further help on tax matters as part of the 'next steps' and prior to making a final decision, so we recommend this requirement is specified in the standards.** This might be to a Chartered Tax Adviser[1],

[1] www.tax.org.uk

Associate Taxation Technician[1] or other suitably qualified professional, for those who can afford to seek their assistance.

4.9.3 For those with small pension savings, on low incomes, such professional advice is likely to be unaffordable and there may therefore be a role for the tax charities[2] – certainly in checking the tax aspects of materials to be used by the delivery partners. **We recommend consulting further with ourselves and the tax charities to discuss what role we could play in developing this part of the service, and what funding would be needed – for example to ensure they have the resources to cope with referrals.**

4.9.4 We note that the guidance service will 'not recommend specific products'. **We do however feel it is imperative that the service urges consumers to be cautious in terms of their future decisions, particularly if they opt to take a large cash sum from their pension pot – so we recommend the standards include such a requirement for delivery partners.** There can be little doubt that advisers will be ready to take advantage of the new rules by offering various investment opportunities to those in possession of a pension lump sum. Consumers should therefore be advised to be wary. For example, there may be enticing opportunities 'sold' to them with promises of high rates of return on things like classic car collections, foreign holiday complexes and so forth. Pensioners in the new regime may have a large amount of money to invest – probably larger than they have ever had in their lives – and all without significant investment experience or knowledge on which to base very important decisions.

4.9.5 A final part of the 'Next steps' ought to be telling the consumer that the service can be used again if they have more pensions coming up for vesting at a later date. This does not appear to be mentioned in the draft standards or consumer journey, so **we recommend its inclusion.**

4.10 ***Guidance output***

4.10.1 The standards say that '[t]he delivery partner must ensure that the consumer receives a record of their guidance session'. We are not clear, however, what format this output will take.

4.10.2 Will it be a printed copy? Will it be sent by email? Or perhaps there will be an option to receive either electronic or paper copies? This might be for the Treasury team considering the design of the service to consider, but **we recommend that the FCA standards for delivery partners are made clear so that they are obliged to cater for the digitally excluded**

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[1] www.att.org.uk

[2] TaxAid – www.taxaid.org.uk and Tax Help for Older People – www.taxvol.org.uk offer direct assistance to those on low incomes, though it should be noted that TaxAid deal primarily with those in crisis. Tax Help for Older People's remit is wider, helping older people with various tax matters. LITRG itself can assist with reviewing and improving proposed materials, and regularly input into HMRC forms and guidance for example.

by offering a paper output. In terms of equality, **it is also essential that any digital output is compatible with those using screen reader software** (upon which many people with impaired vision rely).

4.10.3 To avoid confusion (particularly if a person uses the service more than once), **we recommend that a standard format is used for the guidance output, regardless of which delivery partner a consumer uses.** This is also likely to be helpful in terms of consistency of guidance from delivery partners.

4.10.4 **We also recommend that the standards include a requirement that delivery partners must be prepared to issue, free of charge, a copy of the guidance at a later date** – for instance if the consumer has mislaid it. Considering retirement options is likely to involve a significant amount of organisation, so it is entirely possible that consumers will lose paperwork along the way. Any copy of guidance re-issued to consumers at a later date of course would need to include a warning that whilst it was correct and complete to the best of the delivery partner's ability at the original date of issue, if circumstances have changed, it may no longer be accurate.

5 The consumer journey through the guidance session

5.1 *To include this additional detail as part of the standards for delivery partners*

5.1.1 It is not clear whether the further detail in the section 'The consumer journey through the guidance session' (paragraph 2.14ff of the consultation document) is merely the FCA's thoughts on how the delivery partners should interpret the standards set out in the table, or whether it will form part of the standards. This section provides some useful expansion on the rather high level standards, which must not be lost.

5.1.2 **We therefore recommend this detail is annexed to, and forms part of, the standards as it details what is expected of delivery partners. We would also recommend additions to it, which we set out below.**

5.2 *Paragraph 2.16*

5.2.1 The fourth bullet here states that the delivery partner should 'set out other issues for the consumer to consider'. **We recommend that delivery partners be required to review whether or not the consumer has an up-to-date Will and Power of Attorney in place and to signpost sources of advice if they need to review/implement these.**

5.3 *Paragraph 2.18*

5.3.1 Whilst it is all very well to 'ensure [consumers] recognise that they are responsible for making their own decisions', inevitably there will be cases where delivery partners may pick up on a certain degree of incapacity or inability to make decisions. This could be due to various reasons such as mental ill health, illiteracy or innumeracy, or limited English.

5.3.2 It is not clear what the FCA expect delivery partners to do in such circumstances. It will be essential that they are prepared to signpost sources of assistance so that the consumer receives appropriate help. **We therefore recommend further consideration of this point and that the FCA include guidance on it in the consumer journey.**

5.4 ***Paragraph 2.21***

5.4.1 A further example of specialist advice required is tax advice – see earlier comments. **We therefore recommend this is specifically referred to here.**

5.5 ***Paragraph 2.23***

5.5.1 **We recommend that delivery partners operate the service by issuing a standard client questionnaire and gathering information prior to the guidance session.** They can then have the opportunity to review it and brief the consumer on any missing details prior to the session. This will avoid wasting time if the consumer otherwise arrives with sketchy or incomplete information which would, if offering a holistic and good quality service, oblige the delivery partner to suspend the session, advise what is missing and arrange a further appointment when the consumer has gathered everything that is needed.

5.6 ***Paragraph 2.24 – Financial information***

5.6.1 The bullet which says the delivery partner is expected to ascertain the consumer's 'tax status' needs expansion. The delivery partner must gather all relevant tax factors and the adviser needs to probe the consumer appropriately – people will only answer questions if they are asked, and are unlikely to volunteer information without prompting (as they do not necessarily know what may be relevant). This lack of adequate preparation is well documented by our colleagues at Tax Help for Older People – a charity providing telephone and face-to-face tax assistance services for the low-income element of this same consumer group. A simple 'are you a basic rate taxpayer/non-taxpayer' kind of question will not be sufficient. Other factors will be relevant such as:

- Residency status (both present and any future intention to move abroad)
- Other assets/income sources which may be taxable
- Eligibility for the 0% savings rate, from April 2015
- Current salary, plans to continue working, move to part time hours, etc
- Whether they have any experience with completing SA tax returns, or if they have been a PAYE taxpayer all their life, with one simple source of employment income (the latter possibly requiring much more hand-holding and guidance in terms of the tax consequences of their decisions).

5.6.2 **We recommend that the above points are taken into consideration in the design of a standard client questionnaire/information gathering checklist for completion by the consumer prior to the guidance session.**

5.6.3 **We further recommend that the consumer is advised to bring supporting documentation along with them to the guidance session.** For example, sight of tax documents would allow the adviser to verify data included in the checklist, such as a copy of their last tax return, form(s) P60, P45, P11d, Notice(s) of Coding, tax calculation (P800T) – any or all of which may be relevant.

5.7 ***Paragraph 2.27***

5.7.1 This says the FCA would 'expect consumers to be given information about where to get more information on topics that are relevant to them'. Where will this information be found? **Care needs to be taken for those who might be digitally excluded, for whom a series of web links will not be sufficient, and we recommend that delivery partners are specifically required to cater for these people.**

5.7.2 In the interests of consistency, so that consumers get the best standard of service possible from whichever delivery partner they use, **we recommend that there are approved sources of further information to which consumers are signposted.**

5.8 ***Paragraph 2.28ff – Next steps***

5.8.1 It is important to advise consumers that whichever choice they make as their next step, they should keep their finances under review. With anything other than a simple annuity, which provides a regular income for life, there is likely to be an element of ongoing review – and with some options this may be greater than others. **It is important that consumers understand this and also how they may obtain guidance at a later date if needed[1] – we therefore recommend this is made explicit in this section.**

5.8.2 Such later guidance will be needed even if all pensions have been vested in some form. For example, a retiree might be widowed, resulting in choices to be made concerning the deceased's residual pension. These choices are likely to be more complicated under the new regime than the old (under which the likely scenario was that the deceased's annuity would either have ceased, continued under a guarantee or the survivor may have inherited a reduced pension, if one was built into the contract).

5.9 ***Summary of the consumer journey***

5.9.1 The summary refers to discussing 'broad categories of options [which] include… Taking cash, which could be used for… providing ad hoc income or a rainy day fund'.

There needs to be some discussion as to what the consumer does with this cash while waiting for the rainy day. Even if put on deposit, there are many options and tax consequences of where the cash is held (and, as noted previously, potentially unscrupulous

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[1] We understand that the Government is considering how people will be able to receive further guidance in support after they have vested pensions (paragraph 3.18 of the response to the freedom and choice in pensions consultation): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf

advisers lining up to sell products to the holders of such cash). **We therefore recommend it is made clear that the guidance session must cover these issues**, and advise the consumer to consider carefully whether they require instant access to rainy day funds, or a certain proportion thereof, as compared to the likelihood of a greater return if they tie funds up, for example in a term deposit or perhaps take the risk of investing in equities.

6 Q6: Do you agree with the proposed content of the signposting information? If no, please provide alternative suggestions.

6.1.1 **We recommend that the guidance should require the signposting to include opening hours of the guidance service, in addition to contact details.**

For equality purposes, **disability accessibility options must also be signposted** – for example, details of how to access the helpline if the consumer has impaired hearing or speech.

7 Q7: Do you have any thoughts on the standardisation of this information for the future?

7.1.1 We would prefer it if there were standardisation of the information from the outset, rather than allowing providers to interpret it in their own way. But if not, **we recommend that standardisation is worked towards and achieved as soon as possible.** This will avoid a 'lottery' of being given different information in different formats depending on which pension provider you are with.

7.1.2 Failure to have a standard in place also makes life confusing for those with a number of pension pots, who might get different information from each provider. This problem may be compounded by auto enrolment, which could result in future retirees ending up with more pension pots than in the past.

8 Q8: Do you agree with the proposal to align the timing of the signpost with the existing timing requirements for wake-up packs?

8.1.1 Timing of the signpost with wake up packs seems sensible. We note that there will not be such a signpost if someone has requested a statement in the last 12 months – in that case, the earlier requested statement must have included a signpost to the service.

9 Q9: Do you agree with the proposal to introduce a transitional provision to ensure that those receiving wake-up packs before April 2015 do not miss out on being signposted to the guidance?

9.1.1 Yes.

10 Q10: Do you agree with the proposal to add this guidance? [Preventing the guidance being undermined]

10.1.1 Yes.

10.1.2 Furthermore, although the question is not posed in the consultation document, **we recommend that the FCA continue to monitor the 'unscrupulous' activity referred to in paragraph 4.16 (using the reforms as a hook to target consumers with unauthorised investments) and make the following recommendations to achieve this**:

- **The FCA should engage with HMRC**, perhaps becoming a stakeholder in HMRC's Pensions Industry Stakeholder Forum. This would be a good point of contact with many interested parties, not just from the Pensions Industry but also from taxpayer representatives such as ourselves. From this, feedback about unscrupulous activities might be gleaned. (Or some other means of engagement with HMRC, if this is not felt to fit within the terms of reference of that particular forum.); and
- **The FCA should offer some form of web portal, email inbox or possible telephone helpline through which the public can report unscrupulous activity.** This can also be used to submit concerns regarding the guidance guarantee being undermined (and also to provide copies of any documentation). This should be well publicised and accessible via GOV.UK, as a trusted means of accessing Government services.

10.1.3 Merely taking 'a dim view' of unscrupulous activity is far from adequate – it must be stamped on.

11 Q11: Do you agree with the proposal that firms should refer to the availability of the guidance whenever they are communicating with a customer about retirement options?

11.1.1 Yes, but we do not understand why the FCA are proposing that firms should only refer to availability of the guidance on a 'lighter touch' basis than the normal signpost. Especially if the aim is to standardise the format of the signpost, it would seem easier simply to use the same text/guidance at that point. This would also ensure consistency of information to consumers. **We therefore recommend using the full signpost at all times.**

12 Q12: Do you agree with our proposal to clarify the information provision requirement and add guidance on information that should be included?

12.1.1 Yes. It would also be preferable from consumers' viewpoint if there were to be a standard format for provision of the information, so that those with more than one policy can quickly and easily understand the whole of their pension provision.

13 Q13: Do you have any comments on whether further requirements should be placed on provider behaviour and communications?

13.1.1 Past experience of the trivial commutations rules has shown that providers do not always understand and operate tax correctly on pension lump sums; nor do they always issue the correct paperwork to the consumer. Depending on retirement options that are developed as a result of the new provisions from April 2015, providers could face a steep learning curve in terms of how tax operates on those products. The challenge is to ensure that the past problems are not repeated.

13.1.2 **We therefore recommend that the FCA, with the assistance of tax professionals as required, carry out independent checks on pension providers – both in terms of their materials explaining the tax consequences of retirement options, and of their operation of the PAYE system on new pensions products.** The latter is primarily the responsibility of HMRC, of course, but the FCA should play a part in monitoring complaints and resolving disputes between consumers and providers given that individuals acting alone often have little means of obtaining satisfaction when taking on large companies.

14 Q14: Do you agree with the proposal to remove the reference to maximum withdrawals and require a general statement about sustainability of income <u>and to add to the guidance that the suitability letter should include a description of the potential tax implications</u>?

14.1.1 Firstly, we note that the second part of this question was omitted from the Annex 3 (List of questions) to the consultation document. This omission is disappointing, as it is a key part of the question, on which it is useful to gather respondents' views. **If respondents have not answered the second part of the question, we recommend that the FCA go back to those people or bodies to check whether they did in fact have any views on the tax question.**

14.1.2 The proposal to remove the reference to maximum withdrawals seems sensible.

14.1.3 The tax implications should certainly be included in the suitability report, but we are not clear how providers will interpret the term 'a description of the potential tax implications'. It appears that the requirement is so vague as to be potentially interpreted merely to give a general tax warning. **We would recommend instead that the guidance require advisers to:**

- **describe the tax implications as applicable to the consumer's individual circumstances, giving an estimate of tax liabilities; and**
- **set out how tax will be collected from the consumer, including whether there will be any obligation to notify HMRC of a liability to tax and to complete SA tax returns (and the deadline by which they must do so to avoid incurring a penalty).**

14.1.4 Advisers should then signpost consumers to how they can get more advice on tax from a suitably qualified professional.

15 Q15: Do you agree with our proposal to remove the reference to maximum withdrawals in COBS 13 Annex 2 2.9R?

15.1.1 Yes, on the understanding that this applies only to new income drawdown arrangements from April 2015.

16 Q16: Do you agree that there do not need to be any changes to the key features contents rules? If no, please explain why.

16.1.1 We do not agree that no changes are needed to the key features contents rules set out in COBS 13.3[1].

16.1.2 Given that increased flexibility to take pension income could mean much more significant variations in a person's resulting tax position, we believe that the key features requirements should include detailing the likely tax situation arising and potential tax obligations.

16.1.3 Most retirees in the past would have opted for some form of annuity, or drawdown within certain limits (but perhaps likely to take a regular, unvaried income). The resulting tax consequences were therefore likely to be much more predictable than they will be in the new, more flexible, system.

16.1.4 **We recommend, as in our answer to question 14 above for drawdown, that all key features documentation:**

- **describes the tax implications (tailored to the consumer's individual circumstances and giving an estimate of tax liabilities); and**
- **sets out how tax will be collected from the consumer, including whether there will be any obligation to notify HMRC of a liability to tax and to complete SA tax returns (and the deadline by which they must do so to avoid incurring a penalty).**

16.1.5 Again as above, consumers should be signposted to how they can get more advice on tax, from a tax-qualified professional.

17 Q17: Do you agree that the projection of an annual income in retirement and a projection of the total fund is still useful and therefore this rule should not be amended?

17.1.1 Yes, we think it is useful to continue projecting annual income and the total fund, so that people can understand how their fund is likely to serve them throughout their retirement.

[1] http://fshandbook.info/FS/html/handbook/COBS/13/3

We note however that the requirements for these projections[1] do not appear to mention the consumer's tax liability on their income, and presumably therefore project gross income.

17.1.2 Given that we assume new products may be developed which allow part of a pensioner's income to be paid tax-free (using the 25% tax-free cash within the fund on a regular income basis as opposed to an up-front lump sum), **we again recommend that projections describe the potential tax treatment of income taken.** Indeed the consultation document notes (paragraph 4.39) that:

> 'Most people find it difficult to think about their income needs in retirement and struggle to translate a lump sum into the concept of an annual income.'

17.1.3 They also struggle to understand how tax will impact on their income (perhaps even being under the misconception that their pension will be tax-free), so it is essential that income projections illustrate the likely net of tax income position, not just the gross sum.

17.1.4 This need is compounded by our understanding that the ability to withdraw 25% of a pension fund tax-free, even under the new regime, will be limited to uncrystallised benefits. If a benefits crystallisation event has taken place, but full tax-free cash is not taken at the time, our reading of the draft legislation is that the remainder of the pot will henceforth be capable of producing only taxable income. Consumers therefore need to understand when they are crystallising their benefits and the importance of taking their tax-free cash at that point (and perhaps investing it elsewhere, such as in an Individual Savings Account) to avoid being taxed on it in future.

18 Q18: Do you agree with the proposal to add a requirement for providers to provide their customers with a description of the possible tax implications and of the availability of the Guidance Service when they are applying to access some or all of their pension fund using any of the options available?

18.1.1 Yes, this is key for the reasons described elsewhere in this response. **Furthermore, we recommend there is a requirement to signpost to further sources of independent tax advice from an appropriate, professionally-qualified source.**

19 Q19: What are your views on the approach taken on costs and benefits?

19.1.1 We reiterate our concerns that the proposed sum previously mentioned by Government is likely to be a vast underestimate of the true potential cost of providing the guidance

[1] http://fshandbook.info/FS/html/handbook/COBS/13/Annex2

guarantee[1]. **We therefore recommend that the FCA reinforce these concerns in discussions with HM Treasury regarding the implementation and amount of the levy.**

19.1.2 The Government response[2] gives a figure of some 400,000 people possibly being affected by increased pensions flexibility before April 2015, so the numbers post-April 2015 will no doubt be even greater.

19.1.3 The FCA consultation document sets out pretty tough standards for the delivery partners (which we suggest above could be made even stronger, if our recommendations are accepted). We fear these standards are way beyond the qualifications of Citizens Advice and Age UK advisers, or the resources of MAS and TPAS. To do a good quality job, an adviser would need to:

- do preliminary work before the guidance session (getting the client geared up to obtaining the necessary information and bringing the right papers to the interview – see comments made previously),
- conduct the interview either face-to-face or by telephone (a minimum of two hours, we suggest),
- provide a written report of the interview and the guidance given, and
- possibly have a follow up conversation or meeting with the consumer, particularly if anything in the report requires clarification.

19.1.4 Taking into account all of the above, it is likely an adviser would be able to handle no more than two clients a day. In a normal working year, this would amount to dealing with some 400 clients. This suggests a minimum staff of 1,000 fully trained advisers.

19.2 Even without considering the other work that those organisations are already doing, MAS and TPAS do not have sufficient existing resources to meet the guidance guarantee[3]. To build sufficient capacity to deliver the guidance starting from April 2015 is at best challenging, at worst impossible – **we cannot stress enough that those delivering the guidance must be fully trained, rather than (as we very much fear) proceeding with an inadequate 'call**

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[1] See LITRG's response to 'Freedom and Choice in Pensions', 11 June 2014, in particular paragraph 3.2.3: http://www.litrg.org.uk/Resources/LITRG/Documents/2014/06/140611-litrg-response-freedom-and-choice-in-pensions-final.pdf

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf

[3] The MAS 2013/14 Annual Review, published in July 2014, states on page 104: 'The average number of full-time equivalent employees (including executive directors) in the year was 97.7.' https://www.moneyadviceservice.org.uk/en/static/publications
The TPAS Annual Report for the same year states on page 38 that there were 41 employees on average during the year and that there were 384 volunteer advisers at the end of the year (though we assume these volunteers are unlikely to be 'working' full time).

centre' or 'scripted' model, or attempting to channel people to the web to self-serve for guidance. Furthermore, if others such as Citizens Advice and Age UK become involved, it must be noted that their frontline services may well be delivered by volunteers and they are unlikely to be regulated to give financial advice, nor qualified to advise on the tax implications of pensions vesting.

19.3 With this in mind, **we would prefer and recommend that there is some stronger form of regulation by the FCA of delivery partners**, as we are not clear what sanctions there will be for failure to live up to the proposed standards – other than to feed back instances of poor performance to HM Treasury who 'will ultimately be responsible for ensuring delivery partners take remedial action on the basis of any recommendations about their conduct from the FCA' (paragraph 1.17 of the consultation document). This seems an odd division of responsibility, given that it is the FCA which has the experience of monitoring performance in the financial services industry and – presumably – the appropriate powers to rectify failures.

LITRG
22 September 2014