

Ms Eve Engledow
FSMA Secondary Legislation consultation responses
Financial Stability and regulatory Policy Team
Room4/23
H M Treasury
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Dear Ms Engledow

FSMA two-year review: the impact of FSMA on advice centres and employers offering pension products

We welcome the opportunity to respond to the HM Treasury Financial Services and Markets two-year review: changes to secondary legislation. We are responding to Chapters 3 and 4 regarding the impact of the FSMA on advice centres and employers offering pension products. We set out our general position and then answer questions individually.

Our general position

We support the Treasury's proposals to amend legislation to facilitate access to financial products and pensions advice as a first step. Both initiatives are essential as there is a shortage of much needed advice. Employers and money advisers are holding back from giving advice due to confusion and fear of straying into breaching regulations.

However, the review is too narrow in scope. We would like to see the scope of the review widened to link in with the FSA's financial capability strategy and access to financial services. This response focuses on increasing access to modest and low-income consumers.

Generic financial advice targeting modest and low-income groups is becoming increasingly important. Most consumers cannot afford to pay for independent financial advisers (IFAs) who may not be able to meet their needs. Low-income consumers need advisers who are able to advise on how the welfare benefits system such as pension credits interrelates with the private investment system. For instance, a pensioner with less than £19,000 in savings may need advice on his entitlement to local authority assistance to pay his care home fees as well as on which

product to invest his savings in to provide him with income.

Current situation

There is clearly an advice gap - there is a lack of appropriate financial advice and information for many people with low or modest incomes. Many people are concerned that they do not have enough money to maintain a good standard of living in retirement.

Our written evidence to the Treasury Select Committee on Restoring confidence in long-term savings in January 2004 and our oral submission in May 2004 and our research highlighted the considerable public distrust of financial services providers. Many consumers are extremely confused and find it hard to get relevant, useful information and advice to enable them to make informed decisions. While the FSMA review goes some way in addressing these needs, more needs to be done.

In our research report, *Retirement realities: Shocked and struggling - attitudes of older consumers to financial choices in retirement*, February 2004, 44% of consumers interviewed expressed concern about their retirement income and 43% said they did not trust financial providers.

No Nest Egg, October 2003 researched the attitudes of younger consumers (under 35 years) to saving for retirement. Generally, there was a sense of inertia. Retirement planning is considered a low priority as young consumers see themselves as 'spenders not savers'. More pressing day-to-day needs took priority like paying off debts. Only when they settled down in stable relationships, did they plan ahead. However, such plans were often superseded by new financial pressures and responsibilities such as child care costs and mortgages.

Confidence in the financial services industry was low with repeated references to the collapse or closure of pensions funds and schemes. Additionally, the state pension was criticised as being too low to meet basic needs.

Finally, consumers complained about jargon and wanted information in plain language and more practical advice.

Modest and low-income consumers need financial advice but market forces do not currently meet their needs. Those who seek advice from independent financial advisers

(IFAs) are likely to be rejected, as they are not considered profitable. Others are simply not aware that they could be better off financially if they had appropriate advice.

Advice agencies such as Citizens Advice Bureaux or local Age Concerns can meet the needs of some people with low incomes, for example through benefits advice. However, increasingly people with modest resources require advisers who know about means-tested benefit and charging systems as well as financial products, and may find that neither financial advisers nor voluntary sector advisers can meet this need.

More work is needed to look at the range of problems that currently exist in meeting the needs of consumers on modest incomes. This needs to examine the features of the service that is required and the extent to which access to appropriate advice would improve people's financial position.

Impact of the FSMA on advice centres

Q1: Do you think that the current scope of the financial promotion restriction creates uncertainty or is unduly restrictive of the work of advice centres?

Yes, we agree that clarifying the scope of the FSMA provisions to ensure that advice centres are exempted from the requirements of S21 FSMA will help avoid confusion and encourage free advice. The review refers to money advisers at advice centres taking a cautious approach, wary of making specific recommendations in relation to say a person's mortgage arrangements. They fear unknowingly straying into areas where regulation applies and breaching the rules. This can be detrimental where urgent specific advice is needed, as is often the case.

Q2: Do you think that there should be a specific financial promotion exemption for advice centres?

Yes, but this needs to be balanced against the requirement for minimum standards to avoid possible long-term consequences of bad advice. In view of the increasing profile of financial generic advice and the need to protect consumers, advice organisations should work towards standardised minimum competence levels, which could be verified independently.

Some free money advisers like Citizens Advice have

internal audit systems, which require money advisers to achieve minimum skills and competency levels and include related skills like interviewing. For organisations, which do not have internal schemes, minimum standards might be achieved by requiring free advice organisations to seek membership of a free advice network, which operates minimum standards.

Regulated activities

Q3: Is there a case for further legislation in relation to the business test?

Q4: Do you think that there should be additional legislation to confirm that advice centres are not carrying on regulated activities?

The review refers to FSA guidance, which recognises that advice centres' activities are not regulated activities. FSA guidance or legislation should extend the exemption to include generic financial advice.

Q5: Do you agree with the proposed conditions for exemptions relating to advice centres?

We agree with the proposed conditions requiring advice bodies to hold professional indemnity insurance (PII) or equivalent. This is essential to ensure means of redress when things go wrong.

The proposal to exempt advice only if it is independent of any payment or commission to the adviser should extend to include 'any indirect benefit'. This should ensure that arrangements for instance, to refer potential clients on are excluded from the exemption. Advice given must be impartial and in the interests of the consumer.

The second proposed exemption of debt advice should also be widened to include generic financial advice, which is much needed for the lower income consumer.

Q6: Do you think that there should be other conditions (e.g. minimum competence criteria and specific PII thresholds)?

Yes, minimum insurance cover should be agreed with advice organisations to ensure adequate redress of things go wrong. See also response to Q2 on minimum competence criteria.

Q7: Do you agree with limiting the exemptions to mortgages, endowments, pension products and shares?

No, this is too narrow. If there is to be a product exemption, then this should be widened to include generic advice so that all savings products including ISAs, bank accounts, the Child Trust Fund and Savings Gateway are included.

Q8: Do you think that an exemption limited only to members of certain established networks of advice centres provides a better alternative?

Yes, this would ensure that free advice centres were not overburdened and could in time, work towards minimum competence levels set perhaps by the money advice networks. See also response to Q2.

Q9: Do you think that exemptions for advice centres could have regulatory consequences for other bodies besides advice centres?

We are not aware of other bodies affected.

Impact of the FSMA on employers offering pension products

Q10: Do you agree that there should be an exemption for both real time and non real time promotions made by employers (option 1(c))? If not, which of options 1(a) and (b) do you prefer?

Yes, this is the simplest and clearest structure for consumers. It is preferable to a two-tiered system and so less likely to confuse consumers.

There is currently more of a problem of employers holding back in the area of promotions because they fear breaching the regulations. This is a good start to address the advice gap and this route is well suited to convey information to employees.

Q11: Do you agree that any exemption should be subject to conditions and not be unrestricted?

Q12: Do you agree with the conditions outlined in paragraph 4.31?

Q13: Do you think that there should be other conditions?

We agree with HM Treasury's proposals that to avoid mis-selling, the exemption should be subject to the following conditions:

- Restricting employers' advice to pensions,
- Requiring employers to inform employees of their right to seek advice from authorised persons,
- Only exempting schemes to which employers contribute

and

- Only exempting schemes where no direct commercial benefit is received

Q14: Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employees?

Q15: If so do you think that limiting the ability of employers to make promotions by a requirement that they do not provide pensions advice in relation to an employee's individual circumstances is an appropriate condition?

Q16: Do you think that limiting the ability of employers to make promotions by reference to the definition of the activity of advising in article 53 RAO is an appropriate condition above?

This area presents difficulties and needs more work to fine-tune it. Generally, employers should not give employees individual advice. However, they should be able to provide the terms, risks and benefits of the scheme they are promoting in plain English (article 53 RAO). In order to tailor information to individual needs, employers will need to ask, for instance, whether the employee is married and therefore qualifies for widow's pension or has children. Employers therefore require a minimum level of individual knowledge to avoid overloading employees with information.

Q17: Do you think that limiting the ability of employers to make promotions by prohibiting reference to unfavourable comparisons with other pensions is a viable alternative condition above?

We do not think this is viable as it is not possible to prevent unfavourable comparisons, Any comparisons should be truthful and supported by facts. Some options will clearly be more suited to an employee's circumstances than others.

Q18: Do you agree that there should be no restriction on which employer's representatives can promote the employer's pension schemes?

No, employer's representatives who promote employer pensions schemes must meet a minimum level of competence or skills level.

Please let me know if you have any further queries.

Yours sincerely

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