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## Consultation Response

### Which? response to the FCA's consultation on Simplifying the Pensions & Investment Advice Rules

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### Summary

- **We welcome this consultation paper** and support the Financial Conduct Authority's (FCA) ambitions to enable an advice market that offers different types of support to meet differing consumer needs, at a cost they can afford, so they can make informed decisions to meet their financial objectives. We understand that to achieve this, changes may be needed to the existing advice rules to better enable firms to deliver more simplified forms of advice.
- **However, structural simplification must not come at the expense of consumer protection.** Given the severe historical harms that have occurred in the advice sector - including high levels of unsuitable advice being given on defined-benefit pension transfers transfers<sup>1</sup> - increased firm flexibility must be balanced with robust guardrails.
- **Moving from a 'necessary' to 'sufficient' suitability standard should not result in a lowering of the suitability standard.** We support this proposed change, in principle, to give firms more confidence in conducting suitability assessments in ways that more closely match the complexity of the decision being advised on. However, firms could misinterpret this proposed change as a general lowering of the suitability standard, leading to inadequate fact-finding for holistic advice. Therefore we recommend that, before these rules are finalised, the FCA must:
  - thoroughly evaluate the potential harm to holistic advice consumers
  - assess the impact this proposal would have on the Financial Ombudsman Service's (FOS) ability to adjudicate complaints relating to suitability
  - publish, and receive feedback on, proposed detailed case studies for how this standard will be applied by firms in practice.

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<sup>1</sup> FCA (2020) *Defined Benefit (DB) transfers – further update on our work*. Available at: [\[Link\]](#).

- **Firms should take a hybrid approach when developing ‘proportionate’ suitability reports.** We agree that suitability reports should be consumer-focused. However, these reports are not just important for consumers at the time they receive a personal recommendation. They also serve as a vital audit trail if a consumer needs to seek redress at a later date. Therefore we recommend that the FCA encourages firms to develop a hybrid approach to suitability reports - combining a concise, consumer-friendly summary with a proportionate but more technical report to maintain future accountability and transparency.
- **Retiring some COBS rules and relying instead on the Consumer Duty could limit a consumer’s ability to pursue redress.** Unlike COBS, the Consumer Duty lacks a Private Right of Action (PROA). Removing rules like COBS 9A.3.1R and 9A.3.1AR could therefore inadvertently limit consumers' legal avenues for redress, weakening overall protection. Therefore, we recommend that the FCA retains some of these explicit rules detailing firm responsibilities rather than relying solely on the Consumer Duty at this stage.
- **The shift from an ‘annual’ to a ‘periodic’ requirement for ongoing suitability assessments needs additional safeguards built in.** Without guardrails, ‘periodic’ reviews risk becoming too infrequent, and this may result in consumers drifting into unsuitable positions that would otherwise be identified and addressed in a scheduled check-in. To mitigate this risk, we recommend that the FCA:
  - introduces disclosure requirements for firms to explain their chosen frequency and what circumstances might trigger an earlier review.
  - implement a maximum allowable gap between reviews. This could be an interim measure, until there is more certainty that firms are meeting the FCA expectations for this proposed change.

## Full response

Which? welcomes this opportunity to respond to the FCA’s consultation on simplifying the advice rules. We set out our responses to specific consultation questions below.

### Simplifying advice rules

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

We are supportive of merging these chapters as long as we can be certain that consumers are appropriately protected under any merged rules. For this reason, we seek clarification on the justification for one area where the existing rules have not been carried forward:

- **The requirement to ensure that any life policy proposed is consistent with the client's insurance demands and needs when assessing suitability.** We are supportive of not carrying this forward if it is because a suitability assessment

represents a sufficiently high bar that it would encompass the detail contained in an insurance demands and needs. However, we would like clarification of whether this is likely.

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

We agree that this change will likely give firms confidence to take a more proportionate approach to assessing suitability in the context of better enabling firms to offer simplified forms of advice. This is because firms will be able to adjust the level of information they take into account to determine if advice is suitable to the complexity of the decision being advised on. We are supportive of this approach, in principle, if it better supports consumers to access more simplified forms of advice. However, we do have some concerns about possible unintended consequences of this change, particularly on consumers seeking holistic advice. We see a risk that moving the threshold from ‘necessary’ to ‘sufficient’ could be interpreted by firms as a lowering of the suitability standard or an invitation to conduct ‘slimmer’ fact-finds in scenarios where a thorough fact-finding is crucial. Therefore it’s important that in moving forward with this the FCA ensures they have considered and addressed:

- **Whether consumers seeking holistic advice will be at higher risk of receiving unsuitable advice.** The existing COBS 9.2.2R standard, which requires a firm to understand the ‘essential facts’ about a client, provides an appropriately high bar for suitability that must not be compromised. Consumers seeking holistic advice may face a higher risk of unsuitable outcomes if firms take the new language as a signal to reduce their due diligence. For the regime to remain effective, there must be absolute clarity that ‘sufficient’ and ‘necessary’ both require firms to obtain enough information to act in a consumer’s best interests. We believe it is essential that the FCA works closely with firms to make these expectations clear and intervene, possibly with additional safeguards, if firms are not meeting the new outcomes-based expectations.
- **Any impact this change will have on the FOS’s ability to determine complaints on suitability.** It is essential that consumers have sufficient grounds for redress if they receive unsuitable advice that causes harm. We see a risk that under the new FCA rules, it may be more challenging to identify whether a firm’s fact-finding was ‘proportionate’, even if this led to harm that could have been reasonably avoided. To minimise this risk, we encourage the FCA to ensure that its requirements for suitability reports includes a clear requirement for firms to document exactly what information was considered under their proportionate assessment. While we do not expect most consumers to engage with this information meaningfully at the point of receiving advice, this would provide a necessary audit trail that enables the FOS to assess whether a firm considered an appropriate degree of information.
- **Sharing case studies and receiving further feedback before finalising the rules.** Finally, we note the proposal to supplement these rules with case studies demonstrating simplified models of advice. Given the potential for varying interpretations of ‘sufficient information’, these case studies will be essential for setting clear expectations. We therefore strongly urge the FCA to publish and seek

feedback on these case studies before the rules are finalised. Reviewing these examples in advance would allow stakeholders to ensure the practical application of the rules aligns with the goal of maintaining high standards of consumer protection.

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

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

While we do not oppose this move toward proportionality, we have some concerns that a lack of specific examples could lead to inconsistent application of the proposed exception across the industry. Specifically, to ensure that the exception to consider a client's knowledge and experience (proposed rule 9C.2.12 (2) R) is not used - intentionally or unintentionally - for products that carry higher risks than a novice investor might expect, we believe it will be essential that the FCA provide clear guidance of the FCA's expectations, at least in the beginning.

With this in mind, we'd welcome clarification as to what type of products would fit within the 'target market' which includes clients with no previous experience of investing, as described in proposed rule 9C.2.12 (2) R. Similarly, we would welcome further clarification of what might constitute 'simpler' or 'common' investments as described in the draft guidance at 9C.2.13 (G) 1.

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

Yes, we can see the benefit of having one term in the rules, 'attitude to risk', to describe the consideration of the risk a client is willing to take to meet their objectives rather than multiple ways in which to describe this concept. This will ensure consistency in its application. We note the proposal to clarify that firms are not required to use complex psychometric tools or detailed questionnaires to determine a client's attitude to risk but any changes to the Handbook guidance should make clear that this should not be considered as the norm and that a firm should be able to justify the approach it's taken.

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

Yes, we can see that a proportionate approach could be taken where the advice being provided relates to advice that is limited in scope rather than a more comprehensive product. The FCA proposal to include case studies of how firms can do this in straightforward scenarios in the Handbook is welcomed.

**Question 7: Do you agree:**

***c. that clarifying that the content of suitability reports should be concise and proportionate to the nature and scope of advice provided will give firms confidence to produce clearer and more consumer-focused reports?***

Yes, we agree that it is important that the essential information in a suitability report is consumer-focused. However, suitability reports do not just support consumer understanding at the point of advice. They can also provide a critical starting point for consumers to refer back to should things go wrong. Therefore, we recommend firms take a hybrid approach by combining a concise, consumer-friendly summary with a more in-depth (but proportionate) technical report. This will help to ensure both immediate consumer understanding, while maintaining a more rigorous audit trail for future accountability and transparency.

***d. that we should align the requirement to provide a suitability report before the transaction is concluded for all types of business (except where distance communication prevents this with consent)?***

Yes.

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

While we support the goal of a more streamlined handbook, we have some apprehension about the proposal to remove specific COBS provisions in favour of a full reliance on the Consumer Duty. Our primary concern is the potential impact on consumer redress. Unlike the existing rules, the Consumer Duty does not currently carry a Private Right of Action (PROA). By removing these rules, the FCA may inadvertently limit the avenues available for consumers to seek legal redress if things go wrong, effectively lowering the level of protection available to consumers compared to the current regime.

We are specifically concerned about the removal of COBS 9A.3.1R and COBS 9A.3.1AR, which require firms to be explicit about their responsibilities and the purpose of the suitability assessment. While the Consumer Duty requires firms to support consumer understanding, it is a high-level, outcomes-focused principle. In practice, it may not be clear to firms that the FCA expects them to clearly communicate their responsibilities and the purpose of the suitability assessment to consumers as this is not as obviously linked to achieving good consumer outcomes. These existing rules provide a necessary level of prescription that ensures consumers are educated on the firm's specific obligations to act in their best interests during the advice process.

Until any potential changes to the FOS are finalised and the Consumer Duty is more consistently proven, relying solely on the Consumer Duty may lead to ambiguity in enforcement. We believe there is still significant value in maintaining clearer, conduct-based rules alongside the broader Duty to ensure firm accountability remains robust.

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

Yes - we think the following scenarios could be addressed by case studies:

- **The practical difference between ‘sufficient information’ for common, simple investment advice compared to more comprehensive advice needs.** These examples should clearly define the expected level of fact-find for a more simplified advice journey and a more holistic advice journey, ensuring that even in a proportionate approach, the firm always captures enough detail to mitigate potential consumer harm.
- **How the Financial Ombudsman Service (FOS) would treat suitability related complaints under the revised rules.** Providing this clarity upfront will give both firms and consumer advocates confidence that proportionality will not come at the expense of a consumer’s right to fair redress. We would welcome scenarios that illustrate:
  - How the FOS will evaluate whether a firm’s ‘sufficient’ information gathering was adequate in the event of a suitability challenge.
  - The standard of evidence expected from firms when they have relied on the ‘sufficient information’ threshold for a simpler product.
  - Examples of where a ‘slimmer’ fact-find would be considered insufficient, particularly for consumers with characteristics of vulnerability.
  - Whether, in practice, the revised rules will lead to a change in how FOS evaluates these types of complaints.

## **Ongoing advice services**

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

Yes, though we echo the importance of firms’ ensuring ongoing services are providing genuine fair value for the consumer, as identified in the consultation paper.

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

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

We agree in principle with the proposal to replace the annual suitability requirement with a more flexible approach. However, moving away from a fixed cycle does introduce new risks for consumers, particularly those in long-term arrangements who may drift into unsuitable positions without a scheduled check-in. Until the Consumer Duty is firmly established and its impact on firm behavior is proven, we believe additional safeguards are necessary to ensure consumers do not lose the protection that a regular review provides. Therefore, to mitigate these risks, we suggest the FCA considers:

- **Implementing further transparency and disclosure requirements.** Firms will already be required to communicate the frequency of suitability reviews. However, on top of this, firms should be required to clearly communicate why this is the frequency, what specific triggers will prompt a new suitability assessment and how often this frequency will be reviewed. This will help to ensure that the shift to a 'periodic' model is transparent for consumers and leads to review frequencies that are in the consumer's best interest rather than becoming an excuse for less frequent engagement and/or lowering costs.
- **Including a backstop time limit and supporting guidance, at least as an interim measure.** Introducing a maximum time limit between reviews could provide a necessary safety net for consumers. This would ensure that all consumers receive a minimum level of ongoing protection while the industry transitions to the new regime, preventing situations where 'periodic' reviews become too infrequent to deliver fair value.

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

Yes.

## **Rules on Commission Payments**

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

Yes. It does not make sense that legacy trail commission still applies and this should be phased out. We think further work should be done to investigate the best approach forward, and would be interested in further exploration of the value of a sunset date or transitional period.

## **Professional Client Suitability Standards**

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

As a consumer organisation, we do not have a view on what would be appropriate suitability requirements for professional clients. However, we do share concerns previously set out by the FCA<sup>2</sup> that it is potentially too simple for consumers who don't have the necessary skills, knowledge and experience to self-select as professional investors. In these situations, these consumers will lose the protections they're currently afforded as retail investors which can lead to high levels of consumer harm.

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<sup>2</sup> FCA (2025) CP25/36: *Client categorisation and conflicts of interest*. Available at: [\[Link\]](#)

While it's good to see that changes seeking to address this issue were being consulted on by the FCA<sup>3</sup>, proposed changes have not yet been confirmed. We believe that any changes to the suitability standards for professional clients should therefore not be put in place until necessary changes to the self-selection process have been implemented and tested.

## About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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<sup>3</sup> FCA (2025) CP25/36: *Client categorisation and conflicts of interest*. Available at: [\[Link\]](#)