

Chapter 19

Pensions supplementary provisions

19.7 Pensions nudge and retirement risk warnings

Definitions

19.7.1

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In this section:

- (1) [deleted]
- (2) "pension decumulation product" is a product used to access pension savings and includes:
 - (a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum* payment;
 - (b) an option to take a *small lump sum payment*;
 - (c) a *drawdown pension*; and
 - (d) a *pension annuity*;
- (3) "pension savings" is the proceeds of the *client's personal pension scheme or occupational pension scheme*;
- (4) "retirement risk warnings" are the warnings required to be given to a *retail client* at step 3 of the process specified in this section;
- (5) "risk factors" are the attributes, characteristics, external factors or other variables that increase the risk associated with a *retail client's* decision to access their pension savings using a pension decumulation product;
- (6) "signpost" is the written or oral statement encouraging a *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement which is at step 1 of the process specified in this section;
- (7) "opt out" is the *retail client's* confirmation that they do not want to receive *pensions guidance*; and
- (8) a reference to a "*personal pension scheme*" includes a *stakeholder pension scheme*, and for the avoidance of doubt, an *FSAVC*, *retirement annuity contract* or a *pension buy-out contract*.

Application

19.7.2

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This section applies to a *firm* communicating with a *retail client* in relation to:

- (1) accessing their pension savings using a pension decumulation product; or
- (2) transferring rights pursuant to ■ COBS 19.7.7R(6) for the purpose of accessing their pension savings using a decumulation product.

19.7.3 **R** This section does not apply:

- (1) to a *firm* giving regulated advice to a *retail client* on options to access their pension savings;
- (2) if the *firm* has already provided the retirement risk warnings to the *retail client* in relation to their decision to access their pension savings and the *firm* has reasonable grounds to believe that the retirement risk warnings are still appropriate for the *client*.

Purpose

19.7.4 **G**

- (1) The purpose of this section is to ensure that a *firm*, which is communicating with a *retail client* about a pension decumulation product:
 - (a) explains the nature and purpose of *pensions guidance* to the *retail client*;
 - (b) encourages the *retail client* to receive *pensions guidance*; and
 - (c) gives appropriate retirement risk warnings,
 at the point when the *retail client* has decided how to access their pension savings.
- (2) If the *retail client* has not yet decided what to do, the *firm* should consider whether it is required to signpost the *pensions guidance* under ■ COBS 19.4.16R (signposting pensions guidance) and whether it may be appropriate to provide information about the risks associated with the *client's* options to access their pension savings generally.

19.7.5 **G**

- (1) This section amplifies *Principles 6* and *7*, but does not exhaust or restrict what they require. A *firm* will, in any event, need to ensure that its sales processes are consistent with the *Principles* and other *rules*.
- (2) An example of a behaviour by a *firm* that is likely to contravene *Principle 6* and may contravene other *Principles* is for a *firm* to actively discourage a *retail client* from receiving *pensions guidance*, for example by:
 - (a) indicating in any way that receiving *pensions guidance* is unnecessary, would not be beneficial, or might result in unnecessary delays in accessing their pension savings; or
 - (b) obscuring, de-emphasising or underplaying in any way the explanation about the benefits of *pensions guidance* or any other information relevant to assisting the *retail client* to decide how best to access their pension savings.

- 19.7.6** **G** An illustration of the steps a *firm* is required to take is set out in ■ COBS 19 Annex 1G.
- 19.7.7** **R** **Trigger: when does a firm have to follow the steps?**
A *firm* must follow the steps specified in this section at the point when the *retail client* has decided (in principle) to take one of the following actions (and before the action is concluded):
- (1) buy a pension decumulation product; or
 - (2) vary their *personal pension scheme* to enable the *client* to:
 - (a) access pension savings using a *drawdown pension*; or
 - (b) elect to make one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payments; or
 - (3) receive a one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payment; or
 - (4) access their pension savings using a *drawdown pension*;
 - (5) withdraw funds wholly or partly derived from *flexible benefits* in full from a product or scheme in their pension savings, reducing the value of all of their rights in that product or scheme (including rights in respect of any non-*flexible benefits*) to zero; or
 - (6) transfer rights (other than rights in respect of non-*flexible benefits*):
 - (a) accrued under their existing *personal pension scheme*; or
 - (b) accrued under their existing arrangement to a *personal pension scheme*,
 for the purpose of taking one of the actions in (1) to (5).
- 19.7.7A** **G** A *firm* may assume that a *retail client* who is 50 years of age or over who decides to transfer rights pursuant to ■ COBS 19.7.7R(6) is doing so for the purpose of taking one of the actions in ■ COBS 19.7.7R(1) to ■ (5).
- 19.7.7AA** **G** The effect of ■ COBS 19.7.7R(6) is to include any transfers of rights (other than rights in respect of non-*flexible benefits*) accrued so long as either the transferring arrangement or the receiving arrangement is a *personal pension scheme*. This would, for example, include a *retail client* consolidating some or all of their pension arrangements where the consolidation involves a transfer from or to a *personal pension scheme*.
- 19.7.7B** **R** **Pension transfer to access pension savings**
Where a *retail client* contacts a *firm* to communicate its decision (in principle) to transfer rights pursuant to ■ COBS 19.7.7R(6), that *firm* (whether the *retail client's* existing provider or the *firm* to whom they intend to transfer their rights) must take the actions in step 1.
- 19.7.8** **R** [deleted]

First part of step 1: explain pensions guidance and offer to book the appointment

19.7.8A

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The first part of step 1 is as follows:

- (1) the *firm* must:
 - (a) explain to the *retail client* the nature and purpose of *pensions guidance*, and that they can access the guidance for free;
 - (b) explain to the *retail client* that they can take regulated advice at their own cost; and
 - (c) offer to book an appointment for them to receive *pensions guidance*;
- (2) if the *retail client* accepts the *firm's* offer to book an appointment for them, the *firm* must take reasonable steps to book an appointment at a suitable time for the *retail client*;
- (3) if the *firm* is unable to book an appointment at a suitable time despite taking reasonable steps, or the *retail client* prefers to book the appointment themselves, the *firm* must provide the *retail client* with sufficient information about how to book the appointment themselves;
- (4) if the *firm* books the appointment for the *retail client*, it must provide a confirmation of all the relevant details necessary to enable the *retail client* to attend the appointment;
- (5) if the *retail client* agrees to take the guidance or elects to take regulated advice, the *firm* must not proceed to step 2 until the *retail client* confirms they subsequently received the guidance or advice;
- (6) the *firm* must proceed to step 2 at any point during the process in (1) to (5) if the *retail client*:
 - (a) confirms that they have already received regulated advice and opts out; or
 - (b) opts out, and confirms they do not want to take regulated advice;
- (7) if the *retail client* states that the reason for opting out in (6)(b) is because they already received *pensions guidance* prior to approaching the *firm*, the *firm* must explain to the *retail client* that they may still benefit from receiving the guidance again if their personal circumstances, or the value of their pensions savings, have significantly changed such that the different options described to the *retail client* in the guidance may be of different significance and relevance to them than when they previously received the guidance.

19.7.8B

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For the purpose of ■ COBS 19.7.8AR(1)(a), where a *firm* explains the nature and purpose of *pensions guidance*, the explanation should include that:

- (1) the purpose of the guidance is to help the *retail client* make an informed decision about what to do with their pension savings, including the different options available to the *retail client* to access their pension savings; and

- (2) the guidance is delivered at an appointment with an independent pensions specialist.

19.7.8C **G** Taking reasonable steps to finding a time that is suitable (in **■ COBS 19.7.8AR(2)**) may include the *retail client* being given adequate opportunity to revert back to the *firm* with dates and times that are suitable for them to attend an appointment.

Second part of Step 1: confirming whether the retail client received pensions guidance or regulated advice

19.7.8D **R**

(1) (Where the *firm* has completed the appropriate actions in **■ COBS 19.7.8AR**, and either booked an appointment for the *retail client* or the *retail client* booked it themselves) the second part of step 1 is for the *firm* to check whether the *retail client* subsequently received *pensions guidance* by:

(a) if the appointment was booked by the *firm*, checking that the scheduled appointment date has passed; and only if so, asking the *retail client* to confirm that they attended the appointment and received the guidance; or

(b) if the *retail client* had to or elected to book the appointment themselves, asking the *retail client* to confirm that they subsequently booked the appointment and received the guidance.

(2) If the *firm* booked the appointment and the date of the scheduled appointment has not passed, the *firm* must explain the nature and purpose of *pensions guidance* again in **■ COBS 19.7.8AR(1)(a)** and remind the *retail client* of their scheduled appointment.

(3) If the *retail client* failed to attend the appointment (booked by the *firm* or themselves), or failed to book their own appointment, the *firm* must repeat the process in **■ COBS 19.7.8AR**, and explain to the *retail client* at this point that the *firm* cannot proceed unless the *retail client* confirms that they have received the guidance or taken regulated advice, or opts out.

(4) If the *retail client* confirms that they attended the appointment and received *pensions guidance*, the *firm* must proceed to step 2, unless the *firm* is aware or is made aware that the *retail client's* circumstances have, or may have, changed significantly, and it appears to the *firm* on reasonable grounds that the *retail client* may benefit from a repeat of the guidance in order to consider the different options available to them in the context of their current circumstances. In that case, the *firm* must repeat the process in **■ COBS 19.7.8AR**.

(5) (Where the *firm* has completed the appropriate actions in **■ COBS 19.7.8AR** and the *retail client* elected to take regulated advice), the *firm* must proceed to step 2 if the *retail client* confirms that they subsequently received the advice.

19.7.8E **G** Circumstances where the *retail client* may benefit from a repeat of *pensions guidance*, for the purposes of **■ COBS 19.7.8DR(4)**, include where, since the date of the appointment:

- (1) the *firm* is made aware that the *retail client's* personal circumstances have changed; or
- (2) significant changes in market conditions mean that the *firm* is aware that, or the *firm* is made aware for other reasons that, the value of the *retail client's* pension savings may have significantly changed,

such that the different options described to the *retail client* in the guidance may be of different significance and relevance to them than when they previously received the guidance, in light of the change in circumstances.

Step 2: identify risk factors

19.7.9 **R** Based on how the *retail client* wants to access their pension savings, at step 2 the *firm* must ask the *client* questions to identify whether any risk factors are present, except where **■ COBS 19.7.9AR** applies.

19.7.9A **R** If the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, the *firm*:

- (1) is not required to ask questions to identify whether any risk factors are present; and
- (2) must prepare appropriate retirement risk warnings based on the risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings.

19.7.9B **R** A firm may ask the *client* the questions required by **■ COBS 19.7.9R** before the *client* has decided (in principle) to take one of the actions specified in **■ COBS 19.7.7R** to access their pension savings.

19.7.9C **R** If, to complete step 2, a *firm* relies on information gathered prior to the *client's* decision to access their pension savings, the *firm* must be satisfied that this information is relevant, accurate and up-to-date before giving the risk warnings at step 3.

19.7.10 **R** A *firm* must prepare the questions required by **■ COBS 19.7.9 R** before taking the steps for the first time, and must keep the questions up to date.

19.7.11 **G** To prepare for step 2, the *firm* should:

- (1) identify the main risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings; and
- (2) prepare questions to enable it to identify the presence of those risk factors for different *retail clients*.

19.7.12 **G** Examples of the sorts of risk factors which relate to pension decumulation products are:

- (1) the *client's* state of health;
- (2) loss of any guarantees;
- (3) whether the *client* has a partner or dependants;
- (4) inflation;
- (5) whether the *client* has shopped around;
- (6) sustainability of income in retirement;
- (7) tax implications;
- (8) charges (if a *client* intends to invest their pension savings);
- (9) impact on means-tested benefits;
- (10) debt; and
- (11) investment scams.

Step 3: provide appropriate retirement risk warnings

19.7.13 **R** At step 3:

- (1) if the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, based on how the *retail client* wants to access their pension savings, a *firm* must give the *client* the appropriate retirement risk warnings prepared under ■ COBS 19.7.9AR(2); and
- (2) in all other cases, a *firm* must give the *retail client* appropriate retirement risk warnings in response to the *client's* answers to the *firm's* questions.

19.7.14 **R** A *firm* must prepare the retirement risk warnings required by ■ COBS 19.7.13 R in good time before taking the steps for the first time, and must keep them up to date.

19.7.15 **G** If after considering the *retail client's* answers it is unclear whether a risk factor is present, a *firm* should give the *client* the appropriate retirement risk warning.

Communicating the signpost and retirement risk warning

19.7.16 **R** When communicating the signpost and retirement risk warnings, the *firm* must do so clearly and prominently.

19.7.17 **R** Whatever the means of communication, the *firm* must ensure that the *retail client* cannot progress to the next stage of the sale unless the relevant signpost or retirement risk warning has been communicated to the *client*.

19.7.18 **G** For an internet sale, a *firm* should display the required information on a screen which the *retail client* must access and acknowledge as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *client* the option to click on a link or download a document.

Record keeping

19.7.19 **R** *Firms* must record whether the *retail client* has:

- (1) received the retirement risk warnings at step 3 of the process specified in this section;
- (2) received regulated advice;
- (3) received *pensions guidance*; or
- (4) opted out (and did not receive regulated advice).

19.7.20 **G** If the *firm* was told by the *retail client* that they already received *pensions guidance* or regulated advice prior to approaching the *firm*, and therefore did not need to receive it again, the *firm* should not record this as an opt out. Instead, they should record this as the *retail client* having received *pensions guidance* under **■** COBS 19.7.19R(3), or under **■** (2) for regulated advice.