

CONDUCT OF BUSINESS SOURCEBOOK (FINAL NUDGE TO PENSIONS GUIDANCE) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137FB (FCA general rules: disclosure of information about the availability of pensions guidance);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2022.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Final Nudge to Pensions Guidance) Instrument 2021.

By order of the Board
25 November 2021

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following definition as shown.

*pensions
guidance*

- (1) as defined in section 137FB (4) of the *Act*, information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes);
- (2) (in COBS 19.7) is when a *retail client* receives *pensions guidance* in (1) during an appointment with the provider of the guidance in a way that enables real time human interaction (whether face to face, telephone or through another electronic medium).

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

19 Pensions supplementary provisions

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19.7 Retirement Pensions nudge and retirement risk warnings

Definitions

19.7.1 R In this section:

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(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*.

Application

19.7.2 R 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 accrued under their existing *pension scheme* to another *pension scheme* for the purpose of accessing their pension savings using a decumulation product.

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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.

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- 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.

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Trigger: when does a firm have to follow the steps?

- 19.7.7 R 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):
- ...
- (4) access their pension savings using a *drawdown pension*; ~~or~~
- (5) withdraw the funds in full from their pension savings, reducing the value of their rights to zero; ~~or~~
- (6) transfer rights accrued under their existing *pension scheme* to another *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 accrued under their existing *pension scheme* to another *pension scheme* is doing so for the purpose of taking one of the actions in COBS 19.7.7R(1) to (5).

Pension transfer to access pension savings

- 19.7.7B R Where a *retail client* contacts a *firm* to communicate its decision (in principle) to transfer rights accrued under their existing *pension scheme* to another *pension scheme*, that *firm* (whether the *retail client's* existing *pension scheme* provider or the *firm* to whom they intend to transfer their rights) must take the actions in step 1.

~~Step 1: determine whether the client has received guidance or regulated advice~~

- 19.7.8 R (1) ~~The first step is to ask the *retail client* whether they have received *pensions guidance* or regulated advice:~~
- (a) ~~if the *client* says that they have, the *firm* must proceed to step 2; or~~
 - (b) ~~if the *client* says that they have not or is unsure, the *firm* must explain that the decision to access pension savings is an important one and encourage the *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement.~~
- (2) ~~If, after giving the explanation in COBS 19.7.8R(1)(b), the *retail client* does not want to access *pensions guidance* or take regulated advice, the *firm* must proceed to step 2. [deleted]~~

Step 1: encourage the retail client to take pensions guidance

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

- 19.7.8A R 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 G 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.

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Record keeping

- 19.7.19 R *Firms* must record whether the *retail client* has ~~received~~:
- (1) received the retirement risk warnings at step 3 of the process specified in this section;
 - (2) received regulated advice; ~~and~~
 - (3) ~~pensions guidance.~~ 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.

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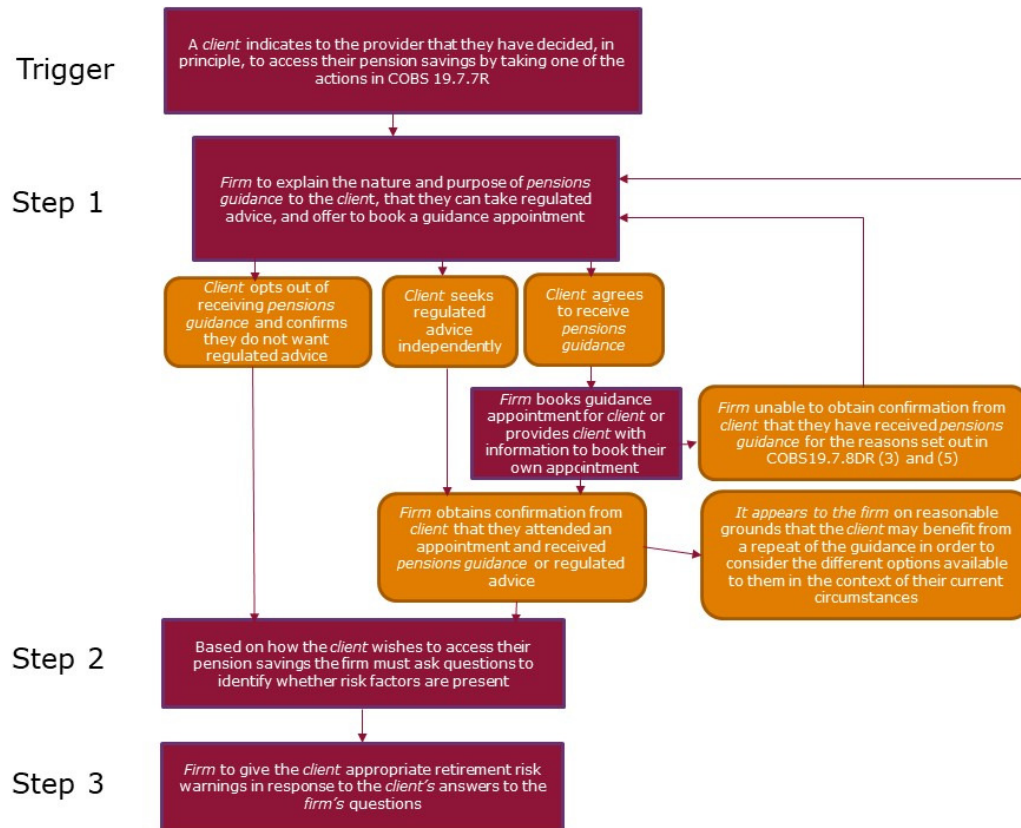
19 Annex 1G **Retirement Pensions nudge and retirement risk warnings - steps to take**

This annex belongs to COBS 19.7

[Editor's note: The existing diagram in COBS 19 Annex 1G is deleted in its entirety. The deleted diagram is not shown. The following diagram is inserted to replace the deleted diagram.]

COBS 19 Annex 1G

Retirement risk warnings-steps to take



Step 2: identify risk factors
COBS 19.7.9R

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.