Response by TISA to HMT's Consultation on Targeted Support

Sophie Legrand-Green, Head of Policy

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About TISA

Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have approximately 270 member firms involved in the supply and distribution of savings and investment products and associated services.

Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **four distinct workstreams**:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*
4. **Corporate Responsibility**
   Exploring issues that directly impact society, the environment, and the economy.

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

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Introduction

TISA welcomes the opportunity to respond to HM Treasury's consultation on the Draft SI which seeks to create a new FSMA Part 4A permission of providing Targeted Support.

TISA has long advocated for Targeted Support to be a new regulatory permission. This approach recognises the potential reach and impact Targeted Support can have and will facilitate appropriate consumer protections. We welcome HMT's draft SI and have provided technical comments on the drafting to ensure firms have clarity and can provide Targeted Support with confidence. We have also sought to align the approach taken by HMT with the FCA's proposed approach. Consistent requirements will reduce the likelihood of unnecessary interpretation gaps.

We have also recommended a route forwards that will allow all pension providers to deliver Targeted Support. FCA research has identified that 12.5 million consumers need help saving for retirement and 75% of DC pension holders aged 45+ do not understand that they need to make decisions about their retirement. This presents a clear and urgent need for better support to help people make informed financial decisions that improve their financial wellbeing. The current regulatory landscape and delineation of official sector responsibilities should not prevent consumers from getting the help and support they so desperately need. We recommend that a solution is found that provides incentives for all pension providers to deliver Targeted Support.

TISA has conducted extensive work with its members of the impact of the Privacy & Electronic Communications Regulation (PECR). It is our view that PECR presents a material barrier to the success of Targeted Support. It contradicts the "opt-out" nature in which the FCA envisions the regime working. We are not convinced that ICO guidance will fix this issue. The FCA and ICO approaches are fundamentally different. The ICO is prescriptive and narrow in its approach to Guidance. The FCA has adopted a flexible, outcomes-based approach to regulation. These two approaches are incompatible, meaning that ICO guidance will not provide firms with the confidence to operate the Targeted Regime on a pro-active basis in respect of all of their existing customers. We strongly urge the Government to adopt a legislative fix. We note that PECR currently sits in secondary legislation, so only secondary legislation may be required to deliver a suitable amendment.

I would like to thank HMT for continuing to engage with TISA on this fundamentally important area of policy change and for attending meetings with our membership. I would be happy to discuss these recommendations and any other aspects of the TISA consultation response. We look forward to HMT and FCA finalising their policy work on the new Targeted Support regime and we stand ready to engage, collaborate and lend out support to help achieve better financial wellbeing for UK consumers.

Sophie Legrand Green
Head of Policy, TISA.

Feedback on the SI

Regulatory Permission

TISA welcomes the draft SI and in particular the decision to create a new FSMA Part 4A regulatory permission that firms must obtain in order to provide Targeted Support. TISA has long advocated for this as a mechanism to provide trust and consumer protection.

We note that there are likely to be TPR-authorised pension funds that would like to offer Targeted Support. While existing provisions will allow these trusts to offer Targeted Support without FCA authorisation where recommendations pertain to in-trust assets, these pension schemes may want to provide Targeted Support in respect of out of trust assets, such as nudges to contract-based decumulation solutions.

HMT and DWP may want to consider whether the provision of Targeted Support should be authorised and supervised by The Pensions Regulator (TPR) in respect of TPR regulated pension schemes, to ensure consistent regulatory oversight and supervision of this activity. Additional arrangements may be needed to facilitate these schemes providing Targeted Support in relation to out of trust assets. FCA's research has shown how urgent the support need is. TISA shares the FCA's view that there is a strong need for consumers to receive more help throughout their pension journey. Our underlying concern is that consumers should not receive differing levels of support depending on the regulatory framework and responsibilities, particularly given consumers do not choose their workplace pension provider and whether their pension will be subject to they are regulated by TPR or FCA regulation. We would hope that all pension providers have clarity and incentives to provide Targeted Support to their members.

Targeted Support Definition & Advice Boundary

The current drafting does not permit firms to make recommendations about cash products. We understand that this is because recommendations in relation to cash savings sit outside of the regulatory perimeter. In practice, we would hope that firms would give these recommendations, particularly where a firm identifies that investing is not suitable for a customer, because, for example, the customer will need to use the money within 5 years. In this instance, a firm may be able to recommend a cash ISA or a cash savings account that has a higher interest rate. This could improve the consumer's financial position and increase their wealth. The customer will also understand the time horizons needed to invest, so will gain financial education and awareness benefits from this journey. We are not recommending that HMT brings these recommendations within scope of the regulatory regime. However, we think it would be helpful for HMT to clarify that while these types of recommendations are outside of scope of the regulatory framework, firms should consider providing this unregulated support to their customers. This information could be given in the ex notes or similar. This would maximise financial inclusion and the overall success of the Advice Guidance Boundary Review.

In addition, the current SI drafting requires a Targeted Support recommendation to do or not do something in relation to "a particular investment". It is very likely that firms will want to provide recommendations that are slightly less granular, for example, to investment types, or product sets. It would be useful for HMT to clarify that such activity does not fall within the definition of Targeted Support because these recommendations are Guidance and therefore will continue to sit outside the regulatory perimeter. We are also requesting that the FCA provides guidance to confirm that the personal recommendation is what differentiates Targeted Support from Guidance, and that it is possible to personalise Guidance so long as that

personalisation does not constitute a personal recommendation. Having clarity on the borders between Guidance, Targeted Support and Advice will enable firms to do business with confidence.

Whilst it is clear that when someone provides Targeted Support they are not advising on investments specified activity, it may be helpful for HMT to also clarify that the recommendation provided at Article 55A(3)(b) shall not constitute a personal recommendation as defined in Article 53(1C). It may be helpful to provide this additional insertion as a new paragraph Article 52(1E).

We also note that the FCA has created a regime that accepts that it will be possible to define a consumer segment by reference to only a common circumstance. It will be possible to have a consumer segment that does not have any common characteristics. The drafting in Article 55A(3)(a) should reflect this.

Disclosure requirements

We assume that the disclosure requirements listed at Article 55A(4) are not proscribed. It would be very useful for HMT to clarify that this is the case and that the content listed in Article 55A(4) can be given in different stages throughout the journey. This is important because a firm may outline the relevant common circumstance or common characteristics before a recommendation is given. This element of the statement may be given at a different time to the statement about the limited nature of the recommendation. The firm may outline that the recommendation is not personalised to the individual customer before the recommendation is given, at the same time or after the recommendation has been given. Firms should be given flexibility to design customer journeys that maximise consumer understanding. Under the FCA's Consumer Duty, firms need to test their journeys and it may be that the timing of certain disclosures are more effective at different points in the overall Targeted Support journey. The SI should recognise and facilitate this innovation and flexibility, allowing firms to deliver these messages at different stages of the journey.

We would also note that Art 55A(4(a) and (b) are virtually identical in their meaning – essentially, the firm must communicate to the customer that the Targeted Support recommendation is not unique to them. In light of this, we question whether both, separate requirements are needed.

More generally, it would be useful for HMT to align their drafting with the terminology used by the FCA (e.g. a "consumer segment", rather than " the group" and "common circumstances" and "common characteristics" rather than similar characteristics and circumstances.

Consequential amendments

We assume that the exclusion for newspapers and broadcast news should also apply in relation to providing Targeted Support.

Appointed Representatives

We note HMT's policy statement on the overall policy approach for regulation of Appointed Representatives (ARs). If the Government wishes to facilitate these business models then ARs should be allowed to provide Targeted Support. However, we are aware that allowing ARs to provide Targeted Support could weaken some of the consumer protection features of the Targeted Support regime (e.g. ongoing direct FCA oversight and supervision of Targeted Support providers). It may be possible to mitigate these risks through increased oversight and adding controls to the FCA's authorisation process.

PECR

The Government's Advice Guidance Boundary Review provides an opportunity to modernise the regulatory framework to better support consumers in making informed financial decisions and support the growth agenda. This will be achieved through the "Targeted Support" policy, which will enable firms to provide free support so people can get the help they need. This initiative aims to provide consumers with timely and affordable help in making important financial decisions, such as providing millions of savers with the support they need to become investors and helping pensioners make more sustainable drawdown decisions.

To enable Targeted Support to reach people who are disengaged with their finances, the FCA envisions that Targeted Support should operate on an "opt-out" basis. This means that Targeted Support should be available to all unless and until a consumer opts-out of receiving it. Currently, the Privacy & Electronic Communications (EU Directive) Regulation 2003 (PECR) does not facilitate this. Operating under the current restrictions in PECR, TISA members have indicated that they may only be able to offer Targeted Support to c.25% of their customers and that these customers are already engaged in their finances. These TISA members span platforms, wealth businesses and retail banks. We would expect this number to be even lower for workplace pension schemes, where pension schemes are unlikely to have necessary consents or to meet the criteria in PECR Reg 22(3) because of the auto enrolment model.

For these reasons, TISA strongly recommends that a legislative solution is found that will enable the Targeted Support regime to operate as intended – i.e. on an opt out basis. This will enable firms to proactively communicate with their customers to provide the support they need.