TISA

Response by TISA to FCA Consultation Paper: Adapting our rules for a changing market - self-invested personal pensions (CP26/20)

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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 members include the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, FinTechs, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

Our work, your influence

With a focus on four key workstreams that best support the consumer and UK financial services, TISA has become a leading industry voice and ally for delivering consumer focused initiatives.

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 **three 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.

All groups focus on both strategic and technical elements of policy/regulation. Key outputs from our workstreams can include recommendations to government and regulators on developing a financial services framework that protects and benefits UK consumers, finding solutions to operational/infrastructure challenges and developing standards of good practice on the interpretation and implementation of new 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:** https://www.tisa.uk.com/about-tisa/

Executive Summary

Whilst agreeing with the aims and objectives of protecting SIPP cash and assets, we have noted the FCA is proposing two protection regimes (CASS and a new PSM&A regime). We believe an overarching objective that needs to be achieved is the ability for both manufacturers (SIPP and Platform Providers) and distributors, to choose to operate entirely under one regime or the other. Operating two regimes would be too complex and too expensive for most firms.

We do recognise that, with unauthorised trustees holding SIPP assets, there are challenges in creating a regulatory framework allowing firms to be able to operate under a single regime. However, with further work to explore how these regimes could operate alongside each other in a completely aligned and complementary way with appropriately consistent data, process and reporting requirements, this broader objective could be achieved. Achievement of this objective would ultimately also help to deliver an aligned experience for retail customers investing in more than one wrapper/product with a single provider.

A successful future dual regime could result in a group of mainstream firms (manufacturers and distributors) operating under the existing CASS regime and who restrict their propositions accordingly to be able to continue to do so. A smaller number of more specialist firms would operate under the PSM&A regime focusing on non-exchange traded and member directed assets and they will build expertise in that area, deliver economies of scale, and allowing specialist FCA supervision to be more concentrated.

To achieve this, there would need to be absolute clarity and absolute separation between the different categories of SIPP. We propose three categories of retail pension product:

1. **Provider Driven** Investment Strategy and Asset Allocation. Often called simple SIPPs, the pension/platform provider has a small number of governed portfolios, designed and overseen by the pension provider themselves, who is accountable for performance and outcomes. All assets are exchange traded (as at present).
2. **Adviser Driven** Investment Strategy and Asset Allocation. Here the pension/platform provider make available a wide range of building blocks (funds, stocks, etc) available to third party advisers who then use those building blocks to execute the investment strategy and asset allocation for which they are then responsible and accountable. Assets are normally exchange traded (as at present).
3. **Customer Driven** Investment Strategy and Asset Allocation. Where the end customer introduces assets into which they would like to invest or is persuaded to accept non exchange traded assets into which they want to invest.

Restrictions could apply to the first two categories and be subject to CASS, whilst category three would operate under the new PSM&A regime, An approach such as this would provide a clean demarcation for which rules a firm operates under in an unambiguous way.

Having categorised the products in a way which aligns to the two regimes, we would then need to define and overlay the governance and oversight requirements.

Question responses

Due Diligence Rules

Question 1: Do you agree with our proposed due diligence requirements for relevant third parties? If not, please outline why. What challenges or unintended consequences, if any, should we consider? Should we consider, if warranted, further protections for SIPP consumers?

Rather than requiring firms to undertake extensive manual reviews, a more effective and proportionate solution would be to enhance the FCA Register so that firms can subscribe to notifications for the firms they deal with and receive alerts whenever there are changes to authorisation status, permissions, restrictions, requirements, disciplinary action or other relevant regulatory information. This would provide firms with timely, reliable information while reducing unnecessary cost and duplication across the industry.

Given that some firms will maintain relationships with thousands of relevant third parties (like advisers and discretionary investment managers) the proposed requirements under COBS 19A.2.4R could create a significant and disproportionate monitoring burden, requiring firms to monitor not only these regulated entities but also their directors, Senior Managers and other associated individuals.

Further thoughts on the proposed obligations placed on SIPPs and how they interact and/or duplicate existing governance requirements are below:

- SIPP Operators should be entitled to rely on another firm's FCA regulated status to a significant degree, and to expect that the other regulated firm adheres the standards of behaviour, conduct and business required by the FCA's Principles, Rules and Guidance.
- Authorised firms are not, generally, expected to police or supervise each other (see FCA CP26-23, 4.7 to 4.10), albeit that regulated arrangements between firms always include some due diligence, some data sharing, and contractual arrangements that reaffirm the other party's obligations. This is highly relevant for the ongoing due diligence points for third party firms and for individuals.
- We have concerns about the proposals for SIPP operators to carry out due diligence on individuals who are already approved by the FCA. These individuals are already subject to the FCA's conduct, reporting and notification requirements, and the FCA is best placed to hold information about any conduct or disciplinary issues rather than transferring this responsibility to SIPP operators. SIPP operators will ordinarily only have access to information that the FCA has made public, so it is unlikely they would identify anything that is not already known to the FCA. As a result, the proposal is likely to duplicate existing regulatory oversight and create additional costs and administrative work for firms. The FCA is responsible for taking action where it identifies serious conduct or behavioural issues involving an approved individual. As the FCA has access to supervisory information and regulatory reporting that SIPP operators do not, it is difficult to see how SIPP operators could reasonably be expected to identify concerns that the FCA has not already identified.
- SIPP Operators should also not have to conduct initial or ongoing due diligence on the Directors and SMF holders of FCA authorised and regulated entities - by having such status the authorised firm has already vetted these individuals in accordance with the rules and the FCA has approved these individuals in accordance with the rules, and continues to approve them by their continued inclusion in the FCA Register - if an individual is not fit and proper to hold the position the FCA must take appropriate action.

- SIPP Operators must be able to rely on FCA authorisation and approval rather than duplicating regulatory checks on FCA-authorised firms and their Directors or SMF holders. As the FCA already assesses these individuals as fit and proper and maintains the FCA Register, SIPP Operators should not be required to conduct additional due diligence or identity verification.
- Given the above, we think that the proposed requirement in COBS 19A.2.4R(1)(e) sets an unrealistic standard for firms to satisfy in practice and believe it should be removed.

Question 2: Do you agree with our proposed approach for proportionate due diligence on investments using asset categories? If not, why not? Do you agree with the asset categories for core and additional due diligence or are further protections needed for some assets to sufficiently protect consumers?

Yes, we agree with the proposals.

Question 3: Do you agree with our proposed contract and monitoring requirements for SIPP operators to protect consumers where assets are acquired and managed by a third party on behalf of the consumer? Are there any challenges for SIPP operators in meeting these requirements, or further requirements needed to protect consumers?

Yes, we agree with the proposals.

Question 4: Do you agree with our proposals on governance, monitoring and record-keeping? If not, why not?

We agree with the principles.

However, it is not possible to understand the scale of the various changes needed to accommodate these aspects without lower-level information. We recommend a more detailed set of proposals covering these areas to enable schemes to understand the impact this will have on operational procedures and system build.

Question 5: Do you agree an implementation period is needed? If so, is 12 months an appropriate timeframe?

Yes, we agree that an implementation period is needed and 12 months is appropriate for the establishment of new arrangements. However, existing relationships create potential challenges, in particular where third parties are not forthcoming with the required information.

We recommend a further 12 months is given for these scenarios which would provide an appropriate timeframe to exit the arrangement in an orderly way. This would also align to the proposals outlined for implementing PSMA reporting obligations, where an additional year is available to manage dependencies on third parties.

Additionally, if our recomendations in relation to due diligence are taken forward, then the realistic implementation period should also be linked to how long it will take to develop the FS Register so that it can deliver real-time, firm specific updates directly to SIPP Operators (and Platforms) about the adviser and discretionary investment management firms that they allow to use their SIPPs.

Pension Scheme Money and Asset Rules

Question 6: Do you agree with our proposed high-level scope and approach to introducing a more prescriptive PSM&A regime for SIPPs? What challenges, unintended consequences, or additional protections for consumers or firms should we consider?

Yes, aligned with our Executive Summary comments, we agree with the overall aims and objectives of the proposals.

We would highlight the variety of propositions within the SIPP industry mean the scale of the effort required to meet these proposals will be much more significant for certain firms, especially for those with more bespoke SIPP offerings and those firms with less exposure to the CASS rules. There may need to be greater transition flexibility for such firms.

We also believe there is a need for greater prescription of requirements and expectations to ensure there is appropriate alignment and consistency across the industry. The need for greater prescription will also be relevant for the audit process to help ensure firms meet the expectations of audit firms. We recognise there is a role for organisations, such as TISA, to play (e.g. through creation of best-practice guides) but this will need to be complemented by further more detailed guidance from the FCA. Within our responses to the questions below, we have noted where we believe additional guidance is required.

Although we recognise the differences between this regime and the CASS regime, we believe consideration should be given to adding a requirement for firms to create and maintain a document similar to a CASS Resolution Pack. The purpose of this document would be to provide information around pension scheme structures, roles and responsibilities, key contacts (including for third parties holding SIPP investments), that could be of use in the event that a pension scheme operator found itself in financial or other regulatory difficulties.

In addition, it would be helpful, to complement the proposal for the need for a senior manager to oversee compliance, with additional guidance on training and competence expectations to be provided.

Again, whilst recognising the differences with the CASS regime, we have also noted there is no explicit reference to the need for consideration to be given to the need diversify pension scheme money (presumably as the result of the self-invested nature of such pension schemes). It would be helpful for the FCA to confirm expectations around this topic.

Question 7: Are there areas where our proposed PSM&A requirements create complexity for firms operating across both regimes (including CASS)? If so, what mitigations would be possible to address these complexities?

We welcome the flexibility the proposals provide for firms not currently impacted by CASS. As noted within the above Executive Summary, we believe mainstream firms should have the ability to opt into the CASS regime. This would avoid many firms needing to operate under two regimes.

Question 8: Do you agree with our proposal that firms should establish and maintain an internal record of pension scheme money, including money held indirectly by third parties? What challenges do SIPP operators face in meeting this requirement?

We agree with the proposals for directly held cash but recommend an alternative approach is taken for cash indirectly held by third parties. There are various reasons why this cash may be held and is often either inflight back to the SIPP operator or being held for a short period of time e.g. pending purchase instructions. Data feeds sent to SIPP operators by third parties will often not separate out Cash and Assets and, as such, we recommend cash held in this way is accounted for as part of the asset record keeping requirements. We believe this would avoid additional more complex administration without increasing risk for pension scheme members.

More specifically we note that under COBS 19B.3.2 (1) it is proposed that allocations are completed within ten business days from receipt. We would point out that this may not always be achievable where scheme money forms part of an in-specie transfer, as many processes still rely on manual intervention. We would not want to see rules resulting in schemes returning assets rather than recording a breach, We are not recommending a change to the 10 day proposed timeline but would ask that some thought is given to scenarios where operational processes may make this a challenging timeline.

Question 9: Do you agree with our proposals for pension scheme money reconciliations, including the frequency of reconciliations and the treatment of indirect pension scheme money as money rather than an asset? What challenges do firms face in meeting these requirements?

We agree with the proposals for directly held cash but, in line with our response to Question 8, we recommend an alternative approach is taken for cash indirectly held by third parties. Data feeds sent to SIPP operators by third parties will often not separate out Cash and Assets and, as such, we recommend cash held in this way is accounted for and reconciled as part of the asset record keeping requirements.

With regards to shortfalls, the proposed rule requires an operator to decide promptly whether to use its own resources to make good a shortfall, engage with the responsible third party, or a combination of both. It draws no distinction between an operational shortfall; a timing difference, a reconciliation error, a third-party breach and a capital loss arising from the outright failure of an investment provider.

If an investment provider becomes insolvent and member assets are lost it is impossible to engage with a party that no longer exists. That leaves the only option for schemes to use their own resources, with no cap on that obligation.

COBB 19B.7.5R, as drafted, would hold SIPP operators to a standard that exists nowhere else in financial services.

We strongly recommend that a SIPP operator cannot be held liable under COBS 19B.7.5R for losses arising from investment provider failure where assets are lost through events outside its control. The appropriate obligations in that scenario are notification, member communication, cooperation with the insolvency process, and assistance with FSCS claims. It cannot be an obligation to make good capital losses from their own fuinds.

Question 10: Would firms prefer to be able to calculate the scheme money obligation using the net negative add-back method?

Given the range of propositions within the broader SIPP market, we believe the net negative add-back (NNAB) method would be appropriate for a number of TISA member firms. We recognise this would only be appropriate where a firm could demonstrate robust systems and controls. This could, for example, apply to a CASS-compliant firm already applying NNAB to its ISA and GIA products. Given existing governance, controls and system capability, extending this approach to SIPP products would be efficient, allowing a consistent approach to be applied across the product spectrum.

Requiring an alternative methodology would introduce significant implementation cost and operational complexity without a corresponding consumer protection benefit. We therefore consider NNAB to be a proportionate and effective approach for firms able to demonstrate robust records, systems, and controls.

Question 11: Do you agree with our proposal that firms must record and maintain data on investment holdings and transactions, including those made through third parties?

In order to fully answer this question, we require further details at a lower level of the amount and type of data that firms will be required to record and store e.g. will a complete transaction history need to be recorded including details of all dividends paid, corporate actions etc?

We believe more detailed transactional third party data should only be maintained where there is a clear rationale and benefit. In particular, for investments already subject to CASS 6 (third party responsibility), there is little benefit to be obtained from requiring detailed transactional data if the pension scheme operator is satisfied that the pension scheme member has access to that transactional data via the third party and the pension scheme operator would simply be duplicating that information in its own records. We are keen to ensure there is consistency across the industry in relation to the sharing of investment data (to ensure efficiency) – whilst the industry can help build that consistency, expectations on the level of detail required need to be clear.

There is a need to ensure relevant COBS rules and guidance also align with expectations. For example, within the proposed COBS 19B.4.5R there is no reference made to transactional information.

Feedback from our members has also suggested the greater clarity around shortfall funding requirements and expectations (particularly in relation to funding expectations, including in situations where a third party is involved) would be beneficial. This will also help to achieve consistency across the industry, with practices that are aligned to FCA and auditor expectations. This could be achieved by introducing additional guidance into the rulebook. Please also note our comment on COBS 19B.7.5R in our response to Question 9 above.

We have noted that reference to COBS 19B.2.1R(3)(b) is duplicated within the draft rules (the second reference should be to COBS 19B.2.1R(3)(c)). In addition, given the reference with the same draft COBS rule on the need to maintain "accurate and current records of *scheme money* and *scheme assets*" we would welcome additional guidance within the rules to provide documented clarity on potential for third party asset information to be updated on a monthly basis.

We have also noted that, within the proposed COBS 19B.4.3R and COBS 19B.4.4G(4) that the SIPP operator should, where possible, avoid relying on information from third parties to maintain records and accounts. Reference is made to seeking to ensure that client instructions made to the relevant third party are also communicated to the operator. Whilst we are aligned on the objective and purpose of these requirements, we are keen to ensure this does not lead to unnecessary and potentially bureaucratic administration for SIPP operators. For example, this requirement could be interpreted as requiring the SIPP operator to obtain copies of all client investment instructions given to investment platforms. This would be of little value to the SIPP operator (in the absence of information from the platform on the number of units purchased/sold etc.). We would encourage the FCA to amend this proposed guidance to ensure expectations are clear and demands on SIPP operators are reasonable and purposeful.

Question 12: Do you agree with our proposals for pension scheme asset checks and reconciliations? What challenges do firms face in meeting these requirements?

We agree with the proposals for standard assets but need a greater level of detail of the expectations for assets of a more esoteric nature, such as commercial property and non-standard investments. For instance, would the SIPP operator be expected to go and physically inspect properties on a regular basis to ensure they are still standing or would a review of title deeds be sufficient? Schemes will need this level of prescription to provide the confidence they are meeting the expectations of the FCA and external auditors.

We have also noted the changes (in Handbook Notice 142) to the CASS Rules to provide additional flexibility for firms experiencing challenges obtaining information from third parties in order to complete external custody reconciliations. There is potential to include additional guidance within the propose PSM&A rules to mirror (in an appropriate way) the flexibility being introduced into the CASS rules via Handbook Notice 142.

In addition, it is important that firms are able to differentiate between where they are undertaking asset checks and where they are undertaking reconciliations (using data from two independent sources). Again, the rules need to provide appropriate clarity here to ensure requirements are met and auditor expectations are also aligned. The Internal System Evaluation Method rules within CASS provide an appropriate model for firms to be able to document their records checks and other controls in place to ensure their records remain accurate. Additional guidance within the rules would be helpful to ensure requirements are understood and expectations are aligned.

We have also noted, within the proposed COB 19B.2.4R(1) reference to reconciliations. We would encourage this to be amended to also make reference other record checks (as well as to reconciliations).

Question 13: Do you agree with our proposals for pension scheme asset valuations?

Schemes will typically have detailed within their rules when assets will need to be revalued. For some assets such as commercial property, this can incur not insubstantial costs for the beneficial owners.

'Materially' is subjective and as such, may be interpreted differently by schemes, the regulator and external auditors. Detailed guidance is required to ensure schemes are undertaking revaluation exercises based on consistent triggers and to reduce the likelihood of the asset beneficial owners incurring unnecessary additional cost.

In line with responses to previous questions, we are also keen to ensure alignment with the expectations of auditors.

Question 14: Do you agree with our proposed audit requirements for the PSM&A regime? What challenges might firms and auditors face in meeting these requirements?

Whilst we are aware of the benefits audits can deliver, we are conscious audit costs are likely to be passed onto members, especially for smaller schemes. Schemes of all sizes will need to be able to access audit services easily and at a fair price. We believe a further review of the cost benefit analysis is necessary in order to demonstrate that such audits deliver a net benefit for pension scheme members. This is particularly true for firms with more bespoke SIPPs and a relatively small number of pension scheme members as (a) the audit will be more complex, and (b) there are more limited economies of scale.

As noted in our response to question 6, there is a need for (a) clarity of requirements/expectations, and (b) consistency across the audit industry. This can, in part, be achieved through additional guidance from the Financial Reporting Council, but the FCA also has a responsibility to ensure the rules (together with associated guidance) provide the necessary clarity.

The FCA may wish to consider delaying the introduction of audits to allow an appropriate bedding-in period for firms. Firms could be encouraged to complete readiness assessments in advance of the formal requirement for an audit being introduced.

Question 15: Do you think the new PSM&A regime warrants the introduction of a new regulatory return, and if not, what existing or alternative information should the FCA use to assess whether firms are meeting the requirements of the new regime?

We have no strong views on this but would recommend new reporting requirements complement the reporting and MI requirements schemes will need to undertake in order to avoid unnecessary duplication.

The FCA may wish to consider, as far as possible, alignment with the existing CMAR reporting requirements to avoid unnecessary reporting duplication.

Question 16: Do you think that a monthly reporting obligation is proportionate, or would less frequent reporting be more appropriate for a Pension Scheme Money and Asset Return? If so, how frequent (for example, quarterly)?

It will depend to an extent on what the reporting requirements comprise. It is difficult to comment on frequency without having a fuller understanding of the reporting requirements and the degree to which reporting can be automated. For firms already subject to CASS CMAR reporting, reporting cycles could be aligned to allow both CASS and pension scheme reporting to be reviewed alongside each other prior to submission.

Question 17: Do you agree that an implementation period is needed? If so, is a two-year period appropriate, with an additional year available for dependencies on third parties?

We agree with the need for an appropriate implementation period but would, again, highlight that, for some firms, the change will be much more significant. For some firms, in particular those with more complex system builds, the proposed two-year period may not be sufficient. We note that, within the CP26/20, the cost benefit analysis also recognises that some firms will need to make a significant systems upgrade (paragraph 123).

Accordingly, we would recommend that the FCA provides flexibility by allowing firms, on a case-by-case basis, to request extensions. Such extension requests would need to include (a) details of the reasons for an extension, (b) information on their project plan (including key milestones), and (c) information on mitigations already in place in relation to outstanding changes.

We also recommend that the implementation timetable avoids traditionally busy periods such as tax year end and avoids times where other pipeline regulatory change is scheduled for implementation.

Cost benefit analysis

Question 18: Do you have any comments on our cost benefit analysis?

Question 19: Do you agree with the assumptions made in our cost benefit analysis?

Question 20: Are there any significant costs or benefits that we did not adequately consider in our cost benefit analysis?

We have no particular comments on the CBA. We do expect these proposals, when enacted to influence the SIPP landscape and lead to further consolidation. Requirements placed on less standard assets may result in a reduction of schemes allowing these, which will impact on member choice for the cohort for whom these are appropriate.