
# Secondary Annuity Market - proposed rules and guidance Response by TISA to FCA Consultation CP16/12

**21 June 2016**

**About TISA**

TISA is a not-for-profit membership association operating within the financial services industry. The focus of our recommendations and actions is improved outcomes for consumers and UK plc with this approach leading to a stronger UK financial services industry.

TISA's growing membership comprises over 150 firms involved in the supply and distribution of savings and investment products and services. These members represent many different sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for the public. Effective policy and regulation and the creation of efficient industry infrastructure continues to be the major focus for our members. TISA is unique in that it represents the entire financial services industry, incorporating cross-sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects which improve industry performance and consumer outcomes, putting us in the unique position of being able to constantly challenge the status quo to bring about material improvement.

## Summary of Recommendations

TISA welcomes the consultation into the creation of a secondary annuity market and is supportive of it in principle as a natural progression of the pension freedoms already introduced. We believe the instinct to trust people with their own money is a good one and are enthusiastic about working with all interested parties to ensure that the reforms work for customers, the industry and the wider national interest.

We agree that the factors customers will have to consider in judging value are complex and effective safeguards need to be in place.

We would support further work in the areas of risk warnings, the practicalities of tracing contingent beneficiaries and dealing with vulnerable customers as cognitive capability declines which we see as the key processes to enable good outcomes for customers.

The viability and success of the market relies on a competitive buyer and advice market emerging where all participants have confidence that the consumer protection processes are practical, effective and can be relied on. We are therefore very keen to work with interested parties to ensure clarity on these key areas.

## Response to Questions

**Q1: Do you agree with our proposal to require specific risk warnings to be given to consumers at first contact?**
**Would you suggest any changes to the format and content of the risk warnings?**

The list of risks highlighted seem appropriate and we agree that, as this is a difficult transaction for annuity holders to judge the value of the income stream being given up, it is critical that customers attention is drawn to the factors to be considered.

We do have reservations that repeated lengthy verbal and written risk warnings have the opposite effect on consumers who start to treat them as obstructive, potentially demeaning and overwhelming, thus losing all impact. Conceivably a customer that decided to sell a couple of small annuities with different insurers, getting quotes from a couple of brokers/buyers as well as buy back quotes from the Insurers might get the risk warnings when requesting the policy details from the Insurers, getting the quotes from the Brokers, getting the quotes from the Insurers and seeking advice or guidance from an adviser or Pensions Wise. Given the likelihood that all firms will adopt similar wording and processes this customer will see/hear the risk warnings at least 10 times, we know this frustrates customers who see this behaviour as the industry trying to protect its interests, not help them.

We believe that risk warnings should be proportionate and work on the principle of reliance. In retail investments the practice developed through MiFID regulations is that a customer either purchases a 'complex' product through a suitability test undertaken by an adviser or subject to an appropriateness test in a non-advised channel. We think there is merit in considering this type of arrangement specifically for Secondary Annuities such that the firm arranging the 'sale' takes responsibility for either providing a personal recommendation or a test to establish the customer understands the nature of the risks of the transaction. That test should not be a yes/no type questionnaire that customers can mechanically tick all the yes boxes but asks questions that genuinely establish whether the customer has grasped the trade-offs they are making. Other firms

involved in the transaction chain can then rely on customer facing firms application of either suitability or appropriateness testing without having to repeat the process.

This is a critical area of the proposals and we would like to see customer testing of the risk warning processes to establish what will be most effective building on the lessons from the implementation of the retirement freedoms regime. The testing needs to use customers from the range of ages for whom selling an annuity is a realistic proposal.

**Q2: Do you agree:**
**• that at first contact all sellers should be:**
**— informed about the compulsory advice requirement;**
**— given a recommendation to take advice and/or Pension Wise guidance**
**— given a recommendation to shop around; and**
**• that annuity providers should check that legally required 'appropriate advice' has been taken, by receiving confirmation in a durable medium, prior to proceeding with annuity income sale?**

In principle we are supportive of the advice requirement, the recommendations to seek help and shop around. We concur that there are multiple factors for customers to consider and that obtaining professional help is good practice. It would seem natural that the limit at which advice is mandated is set at a level consistent with the one set for safeguarded benefits (£30,000 capital value) however consideration will need to be made for the declining equivalent capital value as annuitants age and that for older more vulnerable customers small annuities might be critical income whereas for younger annuitants with other sources of income the issue is less vital. As the equivalent capital value of an annuity is difficult to judge ahead of getting quotes perhaps the threshold should be expressed as an annual income (e.g. advice should be sought on surrendering any annuity over £1,500 per annum) to make the limit easier to apply.

We have been made aware by some of our members that are adviser firms that there is a reluctance from advisers to get involved in the market as the hazards of advising clients on giving up secure income reflects adversely on their Insurance requirements and the lack of searchable lists of authorised, active advisers frustrates customers. We note the proposals that annuity providers only have to check advice has been sought, not that advice has been followed, but have concerns that through supervision providers will be expected to apply further sense checks on suitability before proceeding.

**Q3: Do you agree with our proposals that at first contact all sellers should be informed about the possible need for contingent beneficiary consent, and that FCA should make rules in relation to contingent beneficiary consent?**

We view this as one of the most difficult areas of the new market and one we are keen to work on fair and pragmatic processes.

Our view is that, in law, the scope of contingent beneficiaries for many annuities could be very wide and impractical for a firm to check with certainty, relying on the sellers' declarations. There would appear to be a conflict at the core of a process that relied on those most interested in the sale (the seller and broker) arranging contingent beneficiary consents and a concern that if left to the annuity provider they might err on the side of impractical caution to protect against future claims.

In principle we support consents, we foresee considerable complexity and would be willing to work together with other interested parties to consider practical solutions.

**Q4: Do you agree that, at first contact, all sellers should be informed about:**
**• the ancillary costs the relevant firm reasonably believes it may charge for**
**• the possibility that the relevant annuity provider may cover its costs, directly or indirectly, from the seller?**

We support these proposals and suggest a best practice guide is designed to give guideline costs for each element of the transaction process so that on initial contact the seller gets a guide to the total costs before they choose from the various selling options.

This has to be supplemented by a quote of actual costs at quotation stage as proposed.

**Q5: Do you agree with our proposals on panel disclosure rules?**

These proposals seem appropriate, however we continue to be concerned about the depth of the buyer market and the extent to which a disclosure of panel size will be meaningful if there are only a very small number of participants.

**Q6: Do you agree that firms providing quotes should be required to:**
**• present quotes for annuity income in certain prescribed ways; and**
**• provide the price comparator alongside their quotes for annuity income?**

We support the concept of a comparator and a clear sterling cash value presentation like the Annex example. Whatever prescription is decided it has to be capable of being delivered in a variety of medium and not restrict firms from providing other helpful information. We note the example made no reference to the tax that could be assessed or breakdown of the costs which firms may wish include in these quotations.

**Q7: Do you agree that the 14 day stop period requirement should be extended to all secondary annuity market interactions?**

We support this proposal

**Q8: Do you agree with our proposals on broker incentives and charging?**

The rules should be consistent with RDR and non-advice broking services following the same principles makes sense. We note that Brokers would be treated similarly to Platforms in the retail investment market, having transparent independent fees. One of the features of the post RDR market is the increasing 'vertical integration' where providers, platforms and advisers are owned by the same firm. It should always be clear what role each firm is playing in the transaction, any connections/conflicts are declared and fees for each service are transparent. We have raised in the HMRC tax consultation that the assumed treatment of the deduction of Broker fees from the selling price as an Authorised payment is unclear.

**Q9: Do you agree that the FCA should make rules requiring that an annuity provider can only cover reasonable costs when charging to help facilitate or execute an annuity income sale?**

We agree with the sentiment that only reasonable costs should be included. We would question whether specific rules are required given the overarching COBS rules to treat customers fairly, however, if a specific rule is desirable by the regulator to give teeth to enforcement perhaps a clause could be added to the exit charge regulations being consulted on in CP16/15

**Q10: Do you agree with our proposals to continue to provide access to the ombudsman service in relation to the sale of annuity income on the secondary market?**

Agreed

**Q11: Do you agree with our proposal to continue to provide access to the FSCS in relation to the sale of annuity income on the secondary market?**

Agreed. But it should be noted that the fact that the buyer is unlikely to be able to make a claim in the event of the failure of the underlying insurer will either reduce the second hand value or lead to a contract where in the event of insurer failure the buyer makes a claim against the seller who in turn has to invoke a FSCS claim against the original insurer.

**Q12: Do you agree with our proposal to continue to apply IPRU (INV) Chapter 13 to firms when these new regulated activities are their principal business?**

No views

**Q13: Do you agree that we should provide guidance reminding firms active in this market about their existing legal responsibilities in respect of sellers who may lack full mental capacity?**

This is an area which we believe requires further consideration given the complex combination of potential vulnerability of the seller and traceability of contingent beneficiaries. We support further guidance and have been made aware of academic institutions that have been doing further research into the implications of declining cognitive capability and financial decision making. We would be happy to connect FCA with these institutions if you were not already aware of the work.

**Q14: Do you have any comments on our proposed amendments to FEES?**

No views