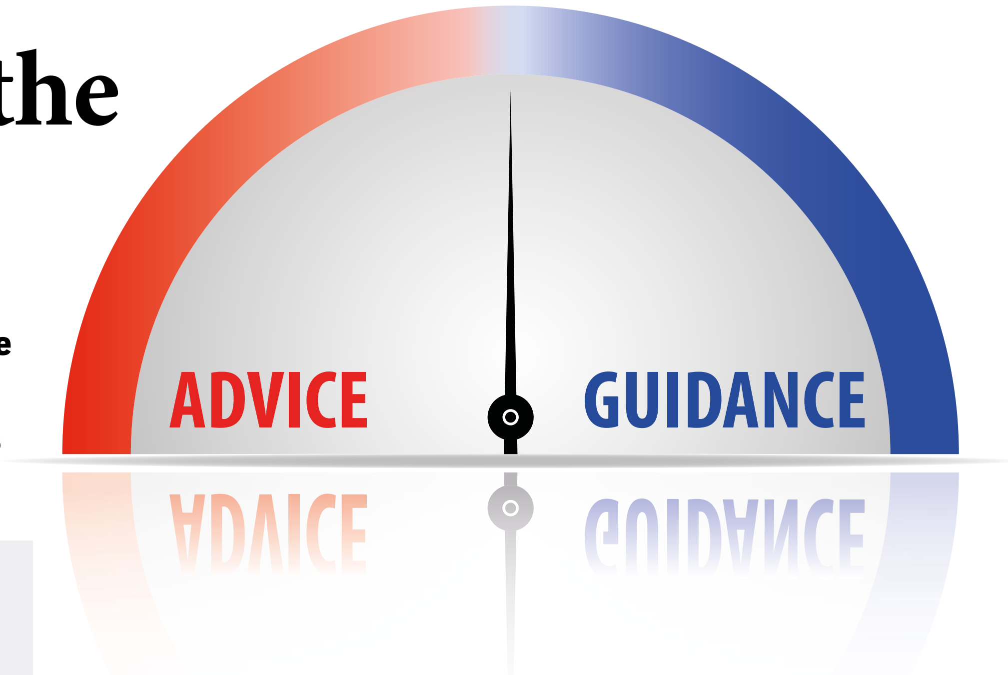
Shifting the needle



The FCA has indicated it will offer clarity over where the border lies between advice and guidance. But is it enough?

Summary

- The FCA has said it will clarify the boundary between advice and guidance, but doubt remains about whether this will lead to improved outcomes.
- Many say that advice should have some sort of tailoring, suited to the lifecycle of the pension.
- The FCA should, respondents say, be looking at how firms can communicate with AE customers electronically.
- Whatever clarifications came into play may still not be enough to close the advice gap.

It is no secret that there is still a marked gap in what people know about pensions and what they need to know.

A pinch point

This is why recent months have seen the Financial Conduct Authority (FCA) signal that it is going to look at the boundary between giving advice and providing guidance.

"To its credit," says AJ Bell public policy director, Tom Selby, "the regulator has diagnosed the problem correctly – namely that there is a substantial 'help gap' in the UK that needs to be filled to better support people when making financial decisions. This issue has become even more pressing because of Consumer Duty reforms, designed to be a step-up in regulatory standards, which require firms to aim for 'good outcomes' for customers and to avoid 'foreseeable harm.'"

This, he says, has created a pinch point between the rules governing the boundary between advice and guidance, resulting in only generic communications being issued, and the need to apply the Consumer Duty requirements, which demand firms do more to help customers make well-informed choices.

New proposals

In August, the FCA published advice on its website to help firms provide more support to customers making investment decisions. The advice given then provided a list of examples to help them edge closer to the boundary between advice and guidance.

The FCA would conclude, however, that "[…] some concerns remain and that some firms are still finding it difficult to develop new services to meet the needs of consumers".

So, the FCA decided to set out a range of scenarios that it thought would clarify the gap. And then it laid out a set of circumstances where it said could provide greater certainty. And that, for now, is where progress is standing.

There was a lot of industry comment at the time about what the FCA was signposting. Writing in its *AGBR – Recap on FCA Proposals to Close the Advice Gap*, the law firm Hogan Lovells said that the ultimate aim of the FCA was to "[…] design a regulatory system where commercially viable, high-quality models of support can emerge and, on this basis, firms and consumers will be expected to manage risk, rather than eliminate it".

TISA head of retirement, Renny Biggins, says that the amount of support pensions decisions received was low across all avenues.

He says: "The amount receiving guidance is low across all pots and ages. You're generally looking at about 10 per cent of people using and getting advice and guidance through Pensions Wise. We do see some people taking regulated advice. But for those willing to take it, there's still a massive proportion of people receiving no advice or guidance in their retirement decisions."

Biggins adds: "We need to do something about this situation, or it's just going to continue. That's going to lead to a lot of bad decisions and people will run out of money."

The question is whether these new proposals will do anything to 'shift the needle' when it comes to firms and how they deal in communicating with customers. One person who thought that the needle would not shift is Aegon pensions director, Steven Cameron. He says that much of what customers ask about or need guidance on can only be judged within context. Ultimately, he says that cautious firms will not be willing to risk fines and punishment for inadvertently advising incorrectly or too much.

"If you're not got permission to offer regulated advice," he says, "then you can't do that. The situation, for many years, is that the industry has been wary of what it can do without hitting up against what the definition of 'advice' is. That's led to where we are, where there are lots of calls for the boundaries to be reviewed on the different ways you can support clients."

It is a view echoed by Biggins. "There has been a lot of calls from within the industry for the FCA to provide more boundaries," he says. "It has been helpful in providing examples, but examples are very restrictive because there are so many different scenarios. What we really need is something more concrete."

He adds: "Firms don't know where the boundaries are, and compliance departments are overly cautious by their very nature. The last thing that a firm wants to do is go over the boundary and provide advice. What happens is that they sit back and stay understandably clear of it."

Some, such as Selby, are more sceptical.

He says: "While the FCA has sought views on clarifications to the existing advice guidance boundary, we are sceptical that this will make any material difference to the approach taken by firms when communicating with customers. As things stand, any communications or 'nudges' that are personal in nature and designed to influence behaviour risk falling on the wrong side of the advice guidance boundary. Firms are also often reticent to go anywhere near where they perceive the boundary to be because of the risk of creating a complaints liability which could be exacerbated by claims management companies."

All of this impacts on consumers. If the good guys are not willing to risk coming to the rescue, those who need advice the most are left in a position where they probably will not get it.

"There is a substantial 'help gap' in the UK that needs to be filled to better support people when making financial decisions"

Decision-making and communications

Even the FCA and the Treasury acknowledge this.

Writing in the Advice/Guidance Boundary Review, the pair jointly said: "Many consumers still struggle to make critical decisions about saving and investing, or accessing their pensions, without help. The consequences of this manifest in different ways. Consumers often keep too much of their savings in cash, remain invested in funds selected at the outset without reviewing their arrangements, withdraw their pensions at unsustainable rates, or invest in inappropriate products that do not meet their risk appetite."

The end result of this, the pair wrote, is that firms may be providing less support than they could, potentially leading to consumers suffering avoidable harm.

Other issues abound, says Biggins, particularly around electronic communications, auto-enrolment, and privacy laws.

"This," he says, "restricts firms from being able to communicate to scheme members, particularly those in workplace pension schemes. The regulations say that to receive communications, they cannot be classed as a marketing tool. Firms can opt in to receive these communications, but it doesn't work like that for auto-enrolment; the firms supply information on people to schemes but there is no point in that process for individuals to opt in."

There was, Biggins and Cameron say, some good news with the FCA's work in relation to the concept of 'targeted support'. This is for firms, the FCA said, to be able to broaden the support they give to consumers, working with limited information to suggest products or courses of action, based on a target market the consumer has been identified as belonging to.

"This is what we've been lobbying for," says Cameron. "What it does is allow someone to take into account limited information from a customer, then suggest a course of action that might be appropriate."

He continues: "It might help them make the most of what they already have. That's where we get the link into workplace pensions. There are over 11 million people who were auto-enrolled. Most of them have never spoken to an adviser. But many of them would still benefit from taking a different course of action."

Advice, says Biggins, should also be tailored to customers at different stages of the pension lifestyle. "It's important to look at younger savers," he says, "who are not saving enough. They're not going to know what they need to know. We need to look at helping people of all ages."

The point is that retirement can last up to 40 years. It seems churlish to expect that the best outcome, of any, would be to only be guiding people at the point of retirement.

Written by Pete Carvill, a freelance journalist