Helping firms provide more support to customers making investment decisions

In 2022, the Government announced plans to fundamentally review how the boundary between advice and guidance on investments is operating. This review will be carried out by the FCA, in conjunction with the Treasury, as part of the Edinburgh Reforms. The review is a substantial piece of work that will take time. In the meantime, the FCA encourages authorised firms to provide greater levels of support for consumers making investment decisions by highlighting the different ways consumers can be supported under the existing regulatory framework, drawing from existing rules and guidance, pending any changes that might be implemented following the review. The FCA has set out examples of where firms can support consumers without inadvertently providing a personalised recommendation. These examples also consider the firms new obligations under the Consumer Duty, which came into force on the 31st of July 2023.

Why the right support for consumers matters

The FCA believes some firms are hesitant to provide help to consumers due to an overly cautious interpretation of the current regulatory framework, and because they are concerned about the regulatory requirements that apply if they provide such a personalised recommendation. As a result, firms are providing less help than they could. This could lead to consumers suffering harm that might have been avoided if they had received more support or information from their firm.

When advice or support is not a personalised recommendation

Investment advice that falls outside the parameters a personalised recommendation is governed by the same high-level standards that apply to investment guidance and other more general communications between a firm and its customer, notably the new requirements under the Consumer Duty. For example, a communication will not be a personalised recommendation if it is:

- Purely factual information

It is purely factual information without expressing any opinion or value judgement on the relevance of that information to the customer's investment decision, and without suggesting any course of action. The provision of purely factual information does not become a personalised recommendation merely because it feeds into the customer's own decision-making process and is considered by them.

- It doesn't relate to a particular investment

On its own, generic or general advice, for example on the merits of investing in investment trusts as opposed to unit trusts or unit-linked insurance, or in Japanese rather than European equities, does not amount to a personalised recommendation.

This means authorised firms would not be giving a personalised recommendation where they offer the following kinds of support, for example:

- Where a customer asks a firm about the difference between an ISA and a pension, a firm can explain their different features, for example, the access restrictions and tax treatments.

- Where a customer asks a firm how much they can withdraw from their pension each year to maintain a desired standard of living throughout retirement. The firm can explain that this is uncertain and the reasons why and direct the client to tools which may help them, such as an online calculator, where personal information or parameters for such a query are input and controlled by the customer.

- Where a customer indicates that they would like to take a withdrawal rate that may be too high. The firm may remind the customer that pensions are designed to fund expenses in the future and taking funds from a pension now may mean there will not be enough left for later life.

- Where a firm is aware that a customer who is asking to take out an annuity has a partner. The firm can explain that the customer has an option to take out either a single life or joint life annuity and explain the consequences and risks of each option.

- Explain factually any potential tax implications of any transaction request.

Further examples of support which is not a personalised recommendation

Other forms of support an FCA-authorised firm may give to a customer may involve the giving of advice, but without amounting to a personalised recommendation. A firm does not give a personalised recommendation if the recommendation is issued exclusively to the public, even if all other elements of the definition are met.

Example A: A firm could publish on its website, in a way accessible to all, a suggestion that its customers take particular action, where the firm considers on reasonable grounds that the action is in the best interests of all its clients or is an appropriate way to mitigate the risk of harm to them.

This could include ways for its customers to avoid extra costs or charges; prevent or mitigate investment losses; enhance their gains under particular market conditions; or earn more interest. The publicly issued communication would not be a personalised recommendation unless it is also issued to one or more particular individuals.

Another way a firm can help the customer without giving a personalised recommendation is by making clear to the customer - where this is true and not unfair - that it has not asked the customer enough information to determine whether a particular investment decision is suitable for them.

Example B: A firm may, if asked by the customer, provide its views on the general merits and potential disadvantages of investors taking a certain course of action in relation to an investment, but without expressing or implying that this is the right course of action for that customer, or that its view is based on information based on that customer's circumstances.

An appropriately and fairly worded disclaimer may help a firm to avoid inadvertently presenting investments as suitable for particular customers or as being based on a consideration of the customers' circumstances.

Interaction with the Consumer Duty

The FCA takes the view that firms need to understand the current regime not only so they can do more to help consumers, but also because the Consumer Duty requires firms to enable and support retail customers to pursue their financial objectives and avoid causing, by act or omission, foreseeable harm to retail customers.

Below are further examples to help firms understand better where the FCA expects them to comply with the Consumer Duty and where they can do so in a way that doesn't amount to providing a personalised recommendation:

<u>Where a customer has significant cash funds on a platform</u>

In this instance, the firm signals to the customer the drawbacks of holding significant levels of uninvested funds in cash and the possibility for greater returns from appropriate investments over the longer term.

<u>Where a customer would like to transfer their pension to a different provider and the firm is aware that the customer may lose a valuable benefit as a result</u>

In this scenario, the firm helps the customer by outlining the risks of losing such benefits and the implications if they are to transfer. For example, if they would lose a protected retirement age, protected tax-free cash or a guaranteed investment return. Where a customer would need to obtain financial advice due to a safeguarded benefit, the firm explains the nature of the benefit that gives rise to the requirement.

<u>Where a customer would like to withdraw funds from a pension and it is clear to the firm that this may have unintended adverse consequences for the customer</u>

For instance, the firm outlines the potential consequences of withdrawing pension funds such as potential tax consequences or affecting means-tested benefits.

<u>Where a customer would like to make a withdrawal from an investment or pension and the firm suspects that the customer may possibly be the victim of a scam or fraud</u>

The firm helps the customer avoid harm by providing appropriate warnings about the risks and implications of their chosen option and encourages the customer to seek financial advice before proceeding.

<u>Where a customer is seeking to reduce or stop their pension contributions due to cost-of-living pressures</u>

The firm makes the customer aware of their options and the short- and long-term potential risks of stopping or reducing their pension contributions, such as losing out on employer contributions and the increased risks of insufficient funds at retirement. Similarly, where a customer is accessing their pension for the first time or increasing their pension withdrawals due to cost-of-living pressures, the firm makes the customer aware of the related potential consequences, taking into account stronger nudge and retirement risk warning requirements, including the risk of sustainability throughout retirement and tax/means-tested benefit consequences.

<u>Where a customer's portfolio has not been re-balanced for some time and the firm is concerned that the portfolio's current holdings may no longer align with the customer's needs</u>

The firm contacts the customer to invite them to review their holdings. So long as the firm does not identify what specific assets the customer should buy or sell, the firm may be giving advice but will not be giving a personalised recommendation in that initial communication.

This summary was based on an FCA report published on the 3rd of August 2023