HM Treasury Consultation

PRIIPs and UK Retail Disclosure

RESPONSE FROM:

ShareSoc

ShareSoc
UK Individual Shareholders Society
Suite 34, 5 Liberty Square, Kings Hill,
West Malling, ME19 4AU
Phone: 0333-200-1595
Email: info@sharesoc.org
Web: www.sharesoc.org

To
retail.disclosure@hmtreasury.gov.uk :
Retail Disclosure Consultation Financial Services
HM Treasury
1 Horse Guards Road
SW1A 2HQ

We are responding to your consultation
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128533/Consultation_PRIIPs.pdf which closes on 3rd March 2023.

We are pleased that you are doing this consultation. We agree with the logic set out in the Minister's forward and in particular "Retail participation in UK capital markets makes them fairer, more open, and more liquid. The UK has a significant and rapidly growing retail investment market. However there remain areas where further reforms can build upon existing strengths and widen access." We are pleased with and support the government's actions to increase retail investor inclusion in new capital raises.

It is now timely to reform PRIIPs, of which the Minister has highlighted many flaws.

Whilst convenient to blame the EU for the KIDS's mess, the UK was still a member of the EU at the time and was party to the discussions resulting in the introduction of KIDs. The shortcomings of KIDs were well flagged in the media at the time they were introduced (Risk, the retail investor and disastrous new rules - John Kay, FT; 19.1.2018). The UK's regulators must surely take some blame for acquiescing to the nonsenses that were evident in the KID system. The industry too, while given little room for discretion, could surely have done something more to mitigate the shortcomings.

We recommend the underpinning principle for consumer information for retail disclosures should be that statements be fair, true and not misleading. These words are used in The FCA rules and MIFID II.

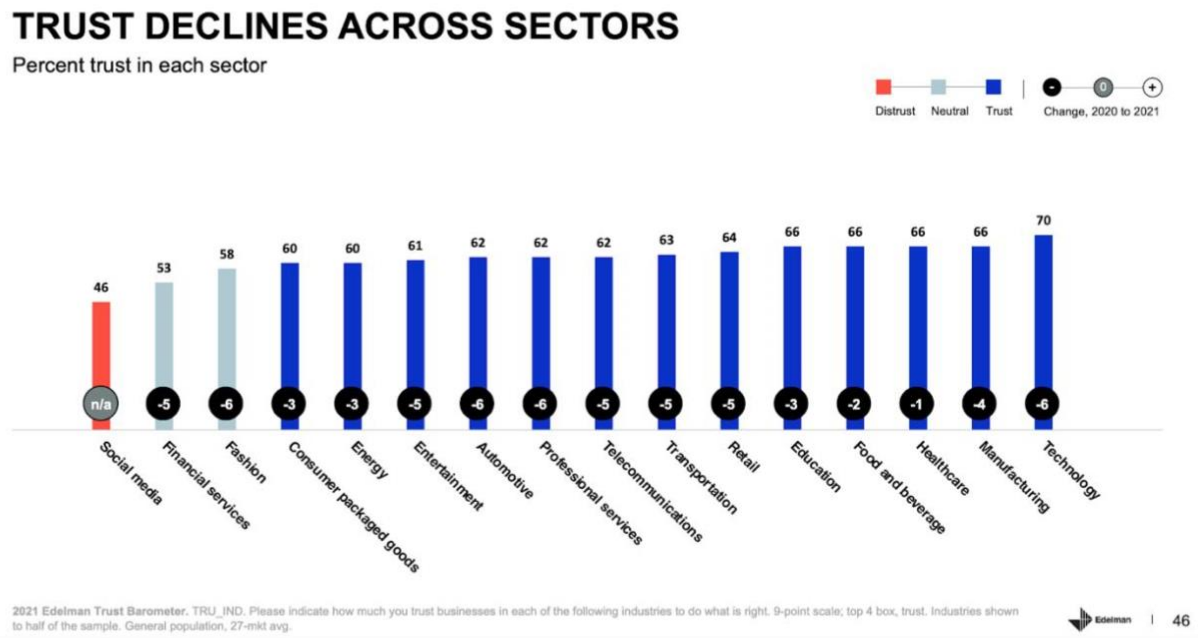
The FCA will need additional powers, e.g. as those mentioned in 4.10. We recommend the FCA perimeter is widened to include, e.g. high risk investments, illiquid investments, mini-bonds, crypto.

There is a serious need for culture change in the financial services industry. This is not a new issue. In June 2021 the FRC ran an excellent series of on-line seminars on audit firm culture. Many of the lessons from these seminars applied just as much to the wider financial services industry as they did to audit. Our understanding is that the FCA, if not directly involved on the development of these seminars, would have been very well aware of them. There would have been nothing to stop financial services firms attending any or all of the seminars.

We do not agree with the comment implicit in para 4.12 that the FCA's existing operational objectives (protecting consumers, ensuring market integrity and promoting effective competition) are working satisfactorily. Too much emphasis has in too many cases been put on market integrity. The Primary objective should be to protect the interests of consumers (customers) by promoting effective competition and preferably a duty of care, rather than a Consumer Duty.

There is valid cause for concern about the reputational integrity of the financial services sector. The highly credible 2021 Edelman Trust Barometer in Financial Services shows it to be the second most distrusted industry; second only to social media.

This should be a great concern for the sector's market participants, trade bodies, professional associations and regulators.



For too long, retail consumers of financial products and services have been treated unfairly. Too often, the financial services industry has exploited weaknesses in the financial education, knowledge and behavioural biases of customers to charge excessive fees and deliver unsuitable products.

We find it very disappointing that the current regime (in respect of all investing, not only PRIIPs) with its Principles and guidance on Treating Customers Fairly is not working, and we agree that radical change is required. For many firms, this will require a significant shift in culture and behaviour. Better and more effective PRIIPs is a part of this process.

The role and need for financial education

Britain needs to teach financial literacy, starting with better standards of numeracy. The UK sits in the bottom half or OECD numeracy skills rankings (*Low adult numeracy is holding the UK back* – FT 3rd November 2021). It is also estimated that just under half of working-age adults in the UK have numeracy skills lower than those expected of an 11 year-old child (*How much is bad maths costing Britain?* - FT 1st July 2021). The Prime Minister has spoken of the need for more maths, but for some the emphasis on maths and numeracy is exactly what prevents people from becoming equity investors. We need to get more people into passive ETFs and use simple language that the person in the high street understands (eg "Vanguard first", interactive's quick start funds see https://www.ii.co.uk/quick-start-funds). However, we should be be wary - if we force innumerate people to learn Maths, we may turn them off learning to manage money.

One of the reasons why protection has become such a hot issue is because so many people are financially ignorant.

Building on this, it is time for a call to arms on financial literacy, guidance, advice and education. The fact that four different terms are used as synonyms, with little or no attempt to define the subtle but important differences that distinguish them, is a clue. The articles by Bethan Staton and Claer Barrett on financial literacy and influencing set the scene ("'Patchy' financial education leaves pupils behind", FT Charity Appeal, December 10 and "Beware influencers plugging the financial advice gap", Opinion, FT Money, December 10).

However, four different government-sponsored bodies profess to offer financial guidance. Not one of them explains the compounding consequences of paying ad valorem fees; not one of them explains the conflicts of interest embedded in the financial advice and product industries; not one of them offers a holistic approach to the chore of personal money management that would help those who find it unapproachable. The above points were made in a letter published in the FT, from former UKSA Chair, John Hunter (Britain needs new ways to teach financial literacy; FT Letters 16.12.22).

We would stress that there are signs of progress from some parts of the industry. For example the enlightened sponsors of ShareSoc Investing Basics videos, The London Stock Exchange who held the launch event for Investing Basics and the Mail whose This is Money is ShareSoc's media partner aiming to maximise the viewing of these free to view videos.

Other points

We believe that the proposal for the Consumer Duty does not adequately address the needs of sophisticated individual investors, and we expect product and service providers to make conservative decisions when addressing this segment. This will be to the detriment of such investors, unless this is addressed as a result of this PRIIPs consultation.

There are also significant gender diversity issues in respect of investing. Women are under-represented in the industry. They are less likely to invest in shares. They tend to be more risk averse and have a greater preference for interest bearing cash accounts rather than shares and funds. See https://www.bnymellonim.com/uk/en/intermediary/inclusive-investment/ for further background and data, e.g. "Currently 86% of asset managers admit their default investment customer is a man and 73% state that their products are primarily aimed at men." These issues impact on PRIIPs and how they should be regulated. It is desirable that these issues are addressed a.s.a.p. in relation to their impact on PRIIPs and more widely.

About ShareSoc (The UK Individual Shareholders Society)

ShareSoc is a UK based retail shareholder organisation, acting in all areas of the UK stock market, with more than 9,000 members. It is a not-for-profit company. ShareSoc is dedicated to the support of individual investors (private shareholders as opposed to institutional investors). We inform and educate our members, through webinars and physical meetings, often where companies present to members, and also through our monthly newsletter, blogs, press releases and via social media. We also campaign for redress, retribution and better regulation when we see things have gone wrong. We do not shirk from tackling companies, the Government or other institutions if we think individual shareholders are not being treated fairly. See www.sharesoc.org

With this background, we provide the following answers to the ten questions posed in your consultation.

Q1: Do you agree with the description of the various problems with the PRIIPs Regulation as stated above? Are there any other aspects of the regulation that you would like to raise as the government moves beyond PRIIPs into a new retail disclosure regime?

1. We agree the complexity of the various problems varies.
2. We believe the culture of many financial services firms is not helpful. Many of these companies prioritise their own profits over any duty of care to their customers. There is currently an obligation in the FCA rules that communications should be fair, clear and readily understandable by consumers, but this is not prioritised and there are too many cases where it does not occur.
3. The FCA approach is rules based rather than principles based. Firms tend to push to the limit of the rules (or laws) and to stretch the boundaries.
4. The Consumer Duty should put customers' (consumers') interests first - not those of the financial services firms. The lack of detail in the Consumer Duty in relation to how it is meant to operate in relation to investing and savings makes it difficult to assess how well it will work.
5. **Tell the full truth about expenses.** Providers must tell the full truth about expenses, especially the importance of minimising, or avoiding altogether, annual percentage charges. This must be clear and transparent. It needs to be visible, not hidden away and not in small print. The long term impact must

be shown as well as up-front costs. Transaction costs in funds must be transparently shown. Consumers also need to be able to understand the truth.

6. There are significant gender diversity issues in respect of investing. Women are under- represented in the industry. They are less likely to invest in shares. They tend to be more risk averse and have a greater preference for interest bearing cash accounts rather than shares and funds. See https://www.bnymellonim.com/uk/en/intermediary/inclusive-investment/ for further background and data, e.g. “Currently 86% of asset managers admit their default investment customer is a man and 73% state that their products are primarily aimed at men.” It is desirable that these issues are addressed as a matter of urgency.
7. We suggest you analyse problems and solutions using a matrix. On one axis we suggest, perhaps, ‘Level of expertise’ and the other axis ‘Advised or not advised’. It might be appropriate to include a robo or advice-lite category in between. Certainly, the current approach of One Size Fits All (OSFA) has been correctly analysed in the consultation as not working.

Advised						
Not advised						
		Inexperienced	Novice	Basic	Sophisticated	Expert

8. There is also a need for better maths education, along the lines recently suggested by the Prime Minister. For example, in relation to risk, as referred to in para 2.23, this can be quantified, e.g. tracking error and volatility (the standard deviation of daily movements in the share, bond or fund price). However, such measures are only useful to consumers who have the necessary numeracy skills and mathematical knowledge to understand what they mean. It is not just about maths. Those people without maths skills, need to be able to invest with confidence. We all need to find ways to communicate with such investors. There has been a sea change in the provision of pensions, away from defined benefit arrangements and companies and government no longer provide pensions wealth to fund retirement: instead the onus has been passed to individuals, but to date there has been no corresponding investment in financial education about investing.
9. Rather than specifying rules, which lead to the LCD [lowest common denominator] approach, the government and FCA should encourage best practices and publicise these. The FRC Lab has adopted this approach with some success. An example of good practice, regarding risk, is this graphic (taken from an e-toro registration sign-up screen) - this highlights that there is a relationship of rewards and risk.

10. Last and most importantly, the regulatory regime will only work if the consumer is educated. There's a need for a driving test of consumer competence and possibly watching/passing of the ShareSoc Investing Basics course.

Q2: Do you agree with the principles set out in paragraph 3.2? If not, please explain.

We do not agree. Investors can only make decisions if they have the financial knowledge and mathematical skills to understand and interpret “clear and useful information”. See also our answer to Q1.

Too much of the PRIIPs is static and boring. Video is best to keep attention (see www.investingbasics.org), but other media have their place. Explanations should be in familiar terms that are simple to understand. Gamblers know that “odds on” means >50% probability and “20 to 1” is 5% (actually less than 5% because of the bookies’ profit margin). Also, not everyone is able to understand charts and graphs, so for them another form of explanation may be helpful.

Q3: Do you agree that retail disclosure should aim to ensure that an investor is empowered to make well-informed decisions related to the product that they are purchasing, rather than focusing on comparability? If not, please explain.

Firstly, we want investors to have the knowledge and understanding (and/or to be able to ask Google or artificial intelligence or seek robo advice) as a means of empowering them to make well informed decisions on whether they should purchase at all.

Secondly, we think if you review the matrix which we produced in answer to question 1 showing advice on one axis and investor sophistication on the other, it will become apparent that a one size fits all approach is not appropriate .

Q4: Do you agree that disclosure requirements should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the FCA? If not, please explain.

Disclosures should take into account and allow for the education and sophistication of the user. There is no point in providing information which consumers will not understand or may misinterpret.

Q5: Are you content with the decision to resolve the UCITS interaction through empowering the FCA to determine a future retail disclosure regime, as discussed above?

No. We believe that the FCA is currently often too heavily influenced by what is in the best interests of the financial services industry.

Q6: Do you agree that there is no need to maintain any PRIIPs-related retail disclosure elements in legislation? If not, please explain.

Yes, but not until the FCA has published and agreed the new disclosure regime.

Q7: Upon revocation of the PRIIPs Regulation, do you agree with the government’s view that the FCA will not require any new additional powers to deliver a retail disclosure regime in line with the objectives stated in Chapter Three? If not, please explain.

We believe that the proposal for the Consumer Duty does not adequately address the needs of sophisticated individual investors, and we expect product and service providers to make conservative decisions when addressing this segment. This will be to the detriment of such investors unless this is addressed as a result of this PRIIPs consultation.

Q8: Are there any wider obstacles that prevent or discourage firms from offering investment products from different jurisdictions to UK retail investors, and what actions would you suggest that the government take on this issue?

No comment.

Q9: Do you have any views on digital disclosure, and, in particular, to what degree do you think a less prescriptive disclosure regime will facilitate innovative disclosure formats going forward?

Shareholder registers and the register of interests should be made available for those with a legitimate purpose. The refusal of Link to provide ShareSoc with these registers of LF Investment Fund (Woodford WEIF) has highlighted the inconsistency of the OEIC 2001 regulations and the 2006 CA.

Q10: Do you have views on other priorities for retail disclosure reform that the government and FCA should consider in future? Similarly, are there other challenges or trends in retail disclosure that regulators and policymakers should consider?

Disclosures should take into account the education and sophistication of the user. There is no point in providing information which consumers will not understand or may misinterpret.

We would be pleased to meet with you to discuss our response and give further background.

Please note that you have our permission to publish our response.

Yours sincerely,

Cliff Weight, ShareSoc

Appendix further background

The FCA's excellent 2016 Interim Report on the Asset Management Industry highlighted many problems, eg:

1. The service offered to investors comprises a search for return, risk management and administration. However, in reality, the investor bears virtually all the risk.
2. The evidence suggests there is weak price competition in a number of areas of the asset management industry. This has a material impact on the investment returns of investors through their payments for asset management services.
3. We have found considerable price clustering for active equity funds, with many funds priced at 1% and 0.75%, particularly once assets under management are greater than around £100m.
4. Overall, our evidence suggests that actively managed investments do not outperform their benchmark after costs. Funds which are available to retail investors underperform their benchmarks after costs – while products available to pension schemes and other institutional investors achieve returns that are not significantly above the benchmark.
5. We find that there is no clear relationship between price and performance.
6. Retail investors do not appear to benefit from economies of scale by pooling their money together through direct- to- consumer platforms. We also have concerns about the value provided by platforms and advisers.

ShareSoc also made a number of pertinent comments in our response to the FCA Duty of Care consultation, see https://www.sharesoc.org/wp-content/uploads/2022/02/ShareSoc-response-to-FCA-CP21_36-A-new-Consumer-Duty.pdf

https://www.sharesoc.org/wp-content/uploads/2021/07/A-new-Consumer-Duty-FCA-Consultation-Paper-CP21_13-v4-Final-ShareSoc-submission.pdf in which we said:

What are your views on our proposals for the Price and Value outcome?

This is a very important issue for investors and shareholders. The FCA's 2017 Asset Management Market Study highlighted the problems of high charges, and high profit margins.

The concept of asking product and service providers to consider value to the consumer is laudable, and signals an intention on the part of the FCA to continue to move the industry away from a demand led product design mentality towards a value proposition, which we support.

However, there are perimeter and definition issues which will prove problematic. The proposals potentially have the effect of banning alternative trading mechanisms such as spread betting and CFD on the basis of cost (in aggregate the outcome for CFD users has been shown to be poor), although for certain investors these instruments may represent a positive utility.

We welcome the continued focus on value and its extension throughout the distribution chain.

An example in the investment and savings sector of improved outcomes might be:

- As well as performance data there would also be information on tracking error. We believe the statistical methods for collecting data on tracking error are inadequate at present and we have separately proposed to meet the FCA to explore how improvements can be made in this regard.
- Information on portfolio turnover (e.g. average length shares held, % held more than say 1, 3, 5, 10 years) and benchmarks that reflect the investment strategy of a fund or investment company (e.g. if the portfolio consists of a mixture of large companies and 35% of small high tech/biotech/health companies, then a FTSE 100 benchmark should not be the only benchmark shown). Often more than one benchmark is needed to provide comparisons that retail investors want and need.

and in ShareSoc's (very detailed 49 page) response to the FCA Consultation: Consumer Investments Market Call for Input
https://www.sharesoc.org/consultation/the-fcas-consumer-investments-market-call-for-input-cfi-response-by-sharesoc/ we said

We recommended these solutions:

1. Tell the full truth about costs and charges, especially the importance of minimising, or avoiding altogether, annual percentage charges;

2. Empower people by pointing out the simple, good value services they can actually use, that do not normally need the involvement of a financial adviser;

3. There needs to be a step change in financial education at all ages. Financial education needs a radical reform and a much better plan;

4. There is a wide spectrum of sophistication of financial knowledge among consumers. This spectrum from novices to experts needs to be taken into account. The solution is not to apply a 'one-size-fits-all' approach which all too often produces a 'nanny-state' outcome. Most consumers see this as patronising and unhelpful.

5. Better regulation.

We also noted the difficulties of giving advice:

The list below provides a concrete illustration of the type of advice which organisations such as ours need to be able to give to people without being exposed to penalties under the regulatory regime. Such clear financial advice would be suitable for the overwhelming majority of UK consumers:

1. If you have any dependents, after taking into account employer provided death cover, ensure that you have about 20 times your annual income in term insurance before you buy any other financial products.
2. Maximise your employee pension contributions up to the largest amount for which your employer will make matching contributions. Invest 100% of this in a global market capitalisation weighted ETF.
3. After taking into account your confidence in finding other employment if you lose your job, ensure that you have several years, preferably five, of cash deposits before you buy any savings products. The reason is that you should not buy a savings product unless you are almost certain that you will never need to convert it into cash for spending for at least five years, and preferably 10 years.
4. If you are young enough to qualify, the next step after the ones above should be to put your savings into a Lifetime ISA, invested in the same ETF.
5. Any further savings should be put into an ISA or SIPP subject to the limits allowed, with the choice of priority depending on your forecast of current and future tax rates. If in doubt about future tax rates, ISA first and then SIPP.
6. Never buy any individual company shares unless you consider yourself an expert analyst or are a hobbyist.
7. Never buy any actively managed funds unless you consider yourself an expert analyst or are a hobbyist.

The above prescriptions, if followed ,would make most British consumers much better off in the long run. They would also drastically reduce the size of the financial services sector in the UK as most providers of investment products either shrank to serving only the expert / hobbyist market or went out of business.

And we gave guidance on how to communicate:

www.sharesoc.org/wp-content/uploads/2020/12/FCA_ShareSoc-response-20201215-Final.pdf

https://...

At a recent Transparency Taskforce TTF seminar [10] several participants at the event made the point (directly or indirectly) that there is much that the financial services industry and regulators could learn from the scammers. This includes things like:

- providing a simple, easy-to-understand message;
- providing clear alternatives which are easy to understand;
- making sure the best option is clearly presented and clearly shown as being in the customer's best interests;
- making a clear statement of benefits from following their advice;
- presenting themselves as being likeable, on your side and keen to help;
- not being constrained by a load of regulation which gets in the way and is of little interest to the customer (e.g. complex T&Cs with lots of small print, copies of documents like the KID, long questionnaires with how-long-is-a-piece-of-string questions);
- avoiding investment jargon - except to the extent that it enhances their plausibility and provides a veneer of financial expertise;
- being happy to do and say things which (in reality) don't sound like being in their interests - like warning people to beware of scammers and offering to help them avoid getting scammed.

There are all behaviours that will be found in any basic primer on persuasion techniques. Yet still regulators, government and the financial services industry seems to wonder why so many people continue to fall for the lure of the scammers while failing to realise where they themselves are going wrong.

As well as learning from the success of the scammer, there are three further actions that could be taken to help combat fraud and scamming.

Another relevant response highlighting background issues was https://www.sharesoc.org/wp-content/uploads/2019/02/UKSA-ShareSoc-response-to-FCA-Sector-Views-180207_Final.pdf

https://www.sharesoc.org/sharesoc-news/response-to-fca-on-platforms-study-sep-2018/

https://www.sharesoc.org/wp-content/uploads/2018/09/Response-to-FCA-on-Platforms-Study-Sep-2018.pdf