PRUDENTIAL

Majoring on the Regulatory macro

This is just for UK advisers – it’s not for use with clients

Important information

This presentation is for adviser use only and not for retail customers, and contains some forward thinking statements which should not be taken as fact. Information given is based on our current understanding, as at June 2019, of current taxation, legislation and HMRC practice, all of which are liable to change and subject to an individual's own circumstances. Terms and conditions of products are available on request. The level of charges may change in the future.

For webex presentations, the event may be recorded for training purposes.

This presentation contains past performance information which is not a reliable indicator of future performance. The value of investments can go down as well as up. Clients may not get back what they put in.

Any examples included are designed to represent a typical situation and are not related to any particular individual. They do not recommend that course of action.

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Our learning objectives for this session

To understand:

1. The key regulatory issues impacting on the investment world
2. How these issues affect advisers and clients alike and where to obtain support
3. Investing for vulnerable clients

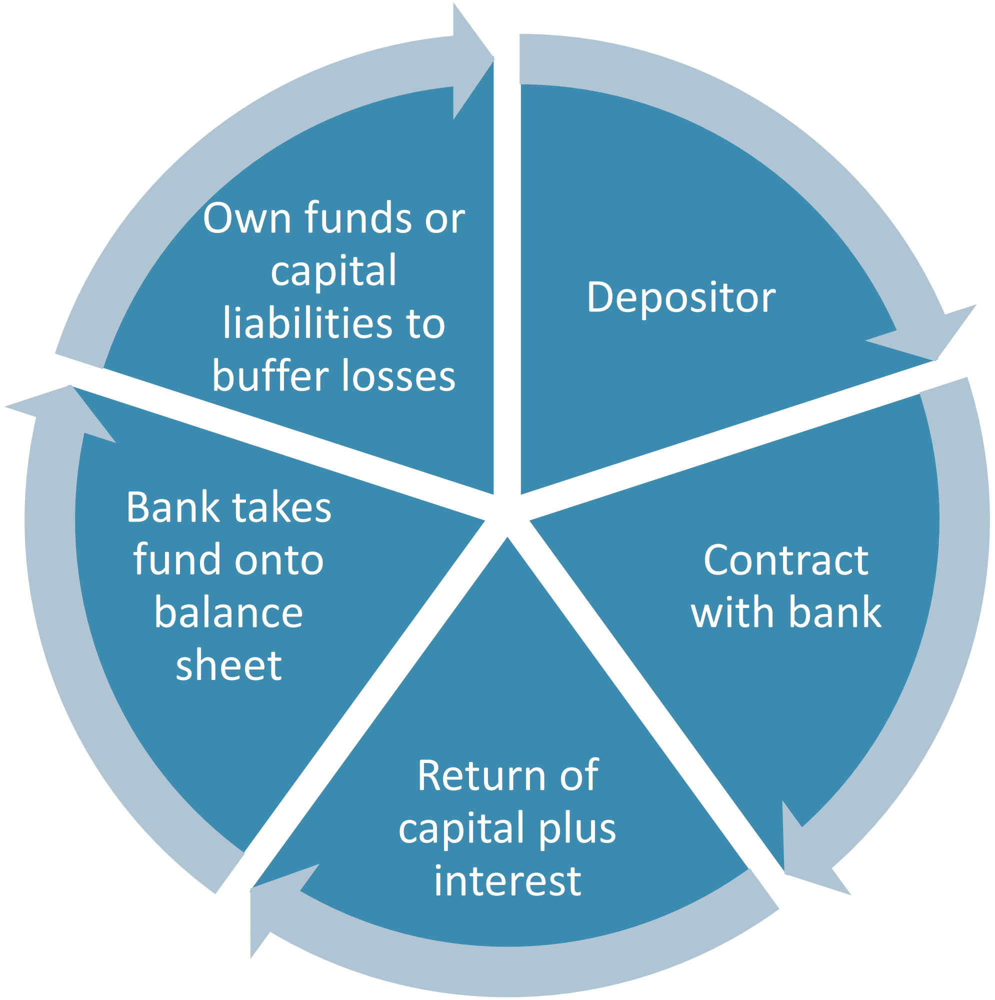
Where it sort of begins

Structural shift post GFC

− Intermediation of financial activity on bank balance sheets

+ Non-bank sector and particularly asset management

The simple deposit account



Other Financial Intermediaries (OFIs)

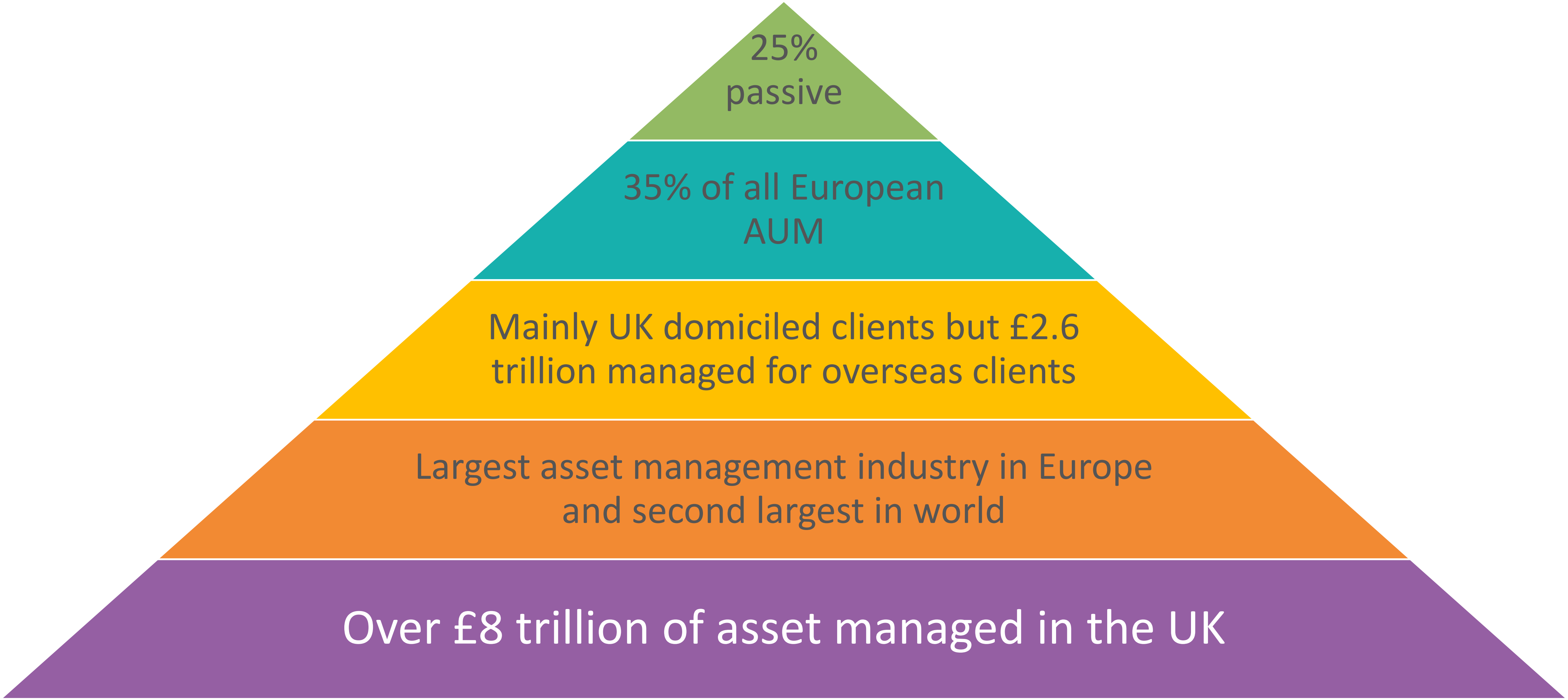
- Basically you are an OFI if you are not a bank, an insurance company, a pension fund or in the public sector

- Now account for around 30% of assets held

So why, and what, is the change?

- Growth of market based finance rather than bank lending
- Market based involves an agent not a principal relationship
- Changes in asset values are not buffered by capital liabilities
- Behaviour is governed by the expectation of investors

Asset management in the UK



The Regulatory horizon

The Regulatory horizon

Senior Managers & Certification Regime

Product Intervention and Product Governance Sourcebook

Regulation

Markets in Financial Instruments Directive

Conduct of Business Sourcebook

The FCA's direction of travel for better customer outcomes

Asset Management Market Study

Focus on costs and value

Investment Platforms Market Study

Focus on facilitating greater competition

PROD

Focus on ensuring products are relevant and appropriate to client's needs

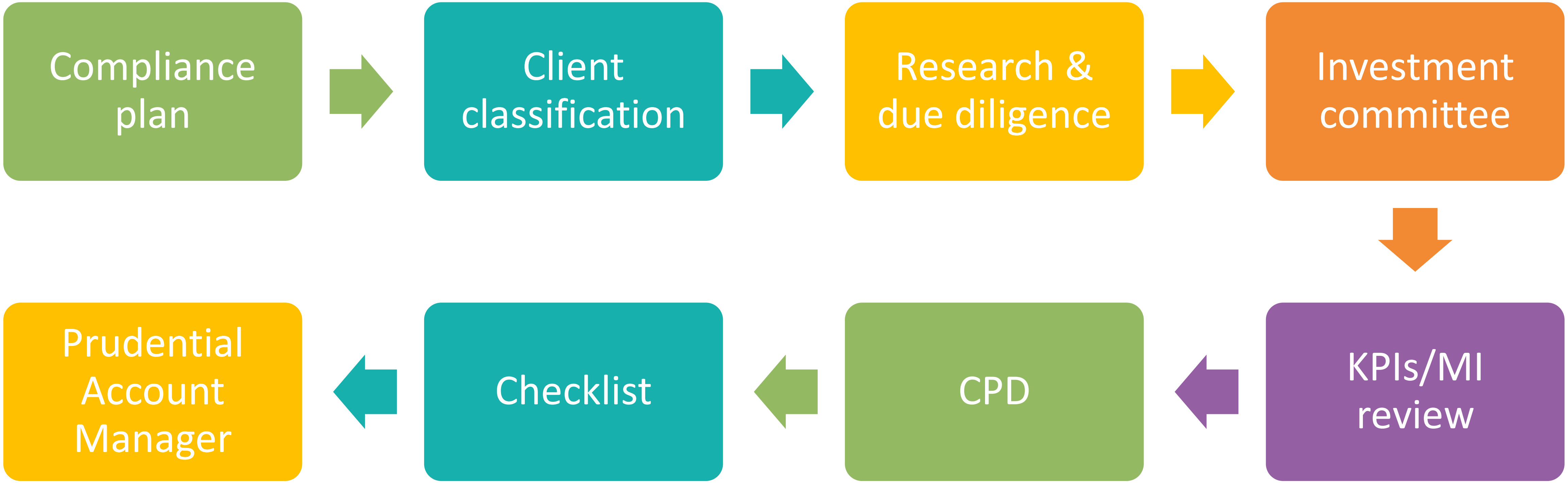
PROD

- *'.....to improve firms' product oversight and governance processes and to set out the FCA's statement of policy on making 'temporary product intervention rules.'*
- Chapter 3.3 specifically relates to Distributors of Financial Instruments
- Be aware of Chapter 3.2 – Manufacture of Products

PROD

- What type of clients do you have?
- Do funds and products recommended meet the target market and how is this evidenced?
- Has a recommendation been made outside of the target market or is this likely and why?
- Has a recommendation been made outside of the manufacturers target market or is this likely and why?
- Are all fees and charges transparent to the client and if not why not?
- How are manufacturers of products and funds assessed for suitability?
- When are reviews undertaken and documented?
- Beware of segmenting by £ value

Compliance with PROD



Insurance Distribution Directive (IDD)

Rules on initial disclosure

- Insurance Based Investment Products (IBIPs)
- FCA confirmed disclosure for IBIPs is met by KID/IOD
- Advice charges need to be disclosed separately by Distributor

Rules on periodic disclosure

- Rules changed 1 Oct 2018 so all in scope customers by 1 Oct 2019
- Definition states “all costs and related charges” but no further detail
- Annual Benefit Statement (ABS) meets requirements for disclosure and includes OAC taken through the product

Disclosure for Personal Pensions

- FCA maintain that existing standards of disclosure are sufficient
- General and specific information on all costs and charges
- Personal Pensions are technically in scope of IDD but FCA have made it clear that focus is on IBIPs

MiFID II

- **Goldman Sachs** - £34.3m fine for failing to provide “accurate and timely” reports on 220 million transactions over 10 years

- **UBS** - £27.8m fine for similar relating to 136 million transactions

FCA Business Plan 2019/20

- Lots of the usual expected and important stuff around things like Brexit; Firms culture and governance; Financial Crime and The Future of Regulation; all of which sit under the heading of "Cross-sector priorities".

- But it is when we get to the "Sector priorities" that things get more interesting for our industry specifically

FCA Business Plan 2019/20

Sector priorities:

Investment management

- Implement new requirements for asset managers
- Further focus on stewardship
- Consultation on a prudential regime for MiFiD investment firms
- Recommendation on revised rules and guidance on liquidity management
- Further assessment of Packaged Retail and Insurance -based Investment Products (PRIIPs)

Retail lending

- Final proposals to reform overdraft market
- Diagnostic work on high cost-credit products
- Support initiatives on substitutes for high cost credit
- Research on Business Model drivers of unaffordable lending
- Launch of a Credit Information Market Study
- Establish regulation of Claims Management Companies
- Conclusion of work on the retained Consumer Credit Act Provisions

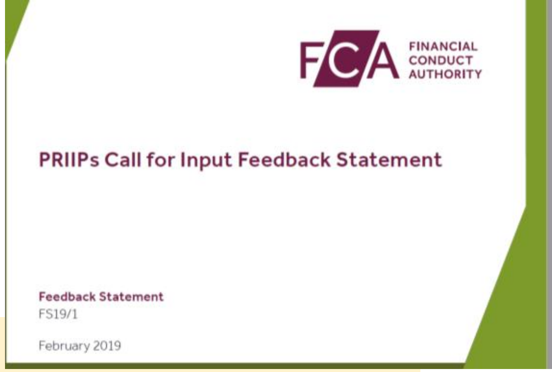
Pensions and retirement income

- Addressing the remedies from Retirement Outcomes Review
- Assessing competition in non-workplace pensions market
- Maintaining action on improving defined benefit transfers
- Further focus on the joint priority work with The Pensions Regulator (TPR)
- Proposals on Independent Governance Committees (IGCs) effectiveness
- Working with partners on the pensions dashboard

Retail investments

- Further review of advice suitability
- Analysing the impact of the Retail Distribution Review (RDR) and Financial Advice Market Review (FAMR)
- Implementing the remedies in Investment Platforms Market Study
- Peer to Peer (P2P) consultation follow up
- Rules on Contracts for Difference (CFDs) for retail investments

PRIIPs


FINANCIAL CONDUCT AUTHORITY

PRIIPs Call for Input Feedback Statement

Feedback Statement
FS19/1

February 2019

- PRIIPs Call for Input Feedback Statement - FS19/1 February 2019

- "We will continue to work closely with the European Supervisory Authorities and the European Commission through 2019, subject to the nature of the UK's relationship with the EU. We do have significant concerns about potentially conflicting requirements or lack of clarity about scope of application of PRIIPs requirements. We will consider the extent to which domestic interpretive guidance could mitigate our concerns around performance scenarios, Summary Risk Indicators and the scope of the PRIIPs legislation"

Suitability Requirements – further thoughts

Another suitability review (confirmed in FCA Business Plan)

- Due this year, with findings next year
- Two main areas of concern – pension transfer advice and high risk investments
- Will be a priority in Supervisory work

Changing Funds requires a Suitability Report

- Can be on a ‘simplified basis’
- Will affect advisers using a Model Portfolio Service on an advised basis where fund changes are made outside of auto rebalancing
- May drive some to consider use of multi asset funds

https://www.pruadviser.co.uk/content/pruadviser/homepage/knowledge-literature/knowledge-library/regulatory-reality-check.html
https://www.pruadviser.co.uk/content/pruadviser/homepage/knowledge-literature/knowledge-library/centralised-retirement-proposition-webinar.html

Additional expenses disclosure

Authorised Investment Fund

Gross return on investments	6.44%
Expenses incurred	0.02%
Net return on investments	6.42%
Annual Management Charge (AMC)	1.20%
Ongoing Charge Figure (OCF)	1.22%
Return for investors	5.22%

- MiFID II
- Disclosure of charges through KIID
- No product illustrations to worry about
- General understanding that OCF is full charge

PruFund/With-Profits

Gross return in investments	6.44%
Expenses incurred	0.24%
Net return on investments	6.20%
Fund Management Charge	0.65%
Yearly total	0.89%
Return for investors	5.55%

EGR

Additional expenses disclosure

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- IDD/PRIIIPs
- Disclosure of charges through product KID and fund IOD (based on impact of charges **including** product charge)
- Product illustrations based on arithmetic charge

Vulnerable clients

Defining

Identifying

Vulnerability

Challenges

Good practice

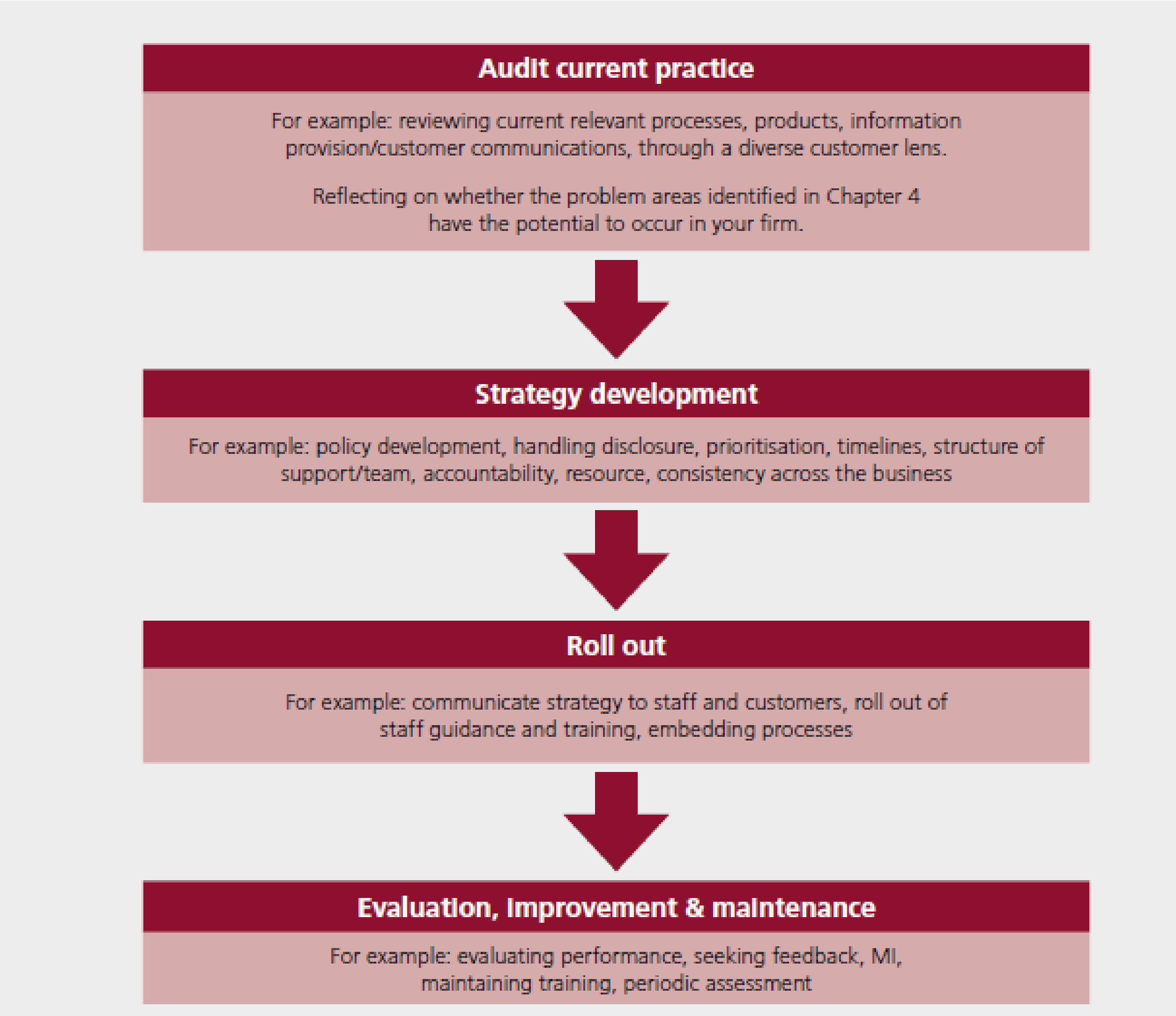
Defining vulnerability

- FCA definition - 'A **vulnerable** consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.'

Defining vulnerability

- A vulnerable consumer could be defined as:
- "A consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment:
- Is at higher risk of experiencing negative outcomes in the market;
- Has limited ability to maximise his/her well-being;
- Has difficulty in obtaining or assimilating information;
- Is less able to buy, choose or access suitable products; or
- Is more susceptible to certain marketing practices.”

FCA Practitioner Pack



https://fca.org.uk/publication/occasional-papers/occasional-paper-8-practitioners-pack.pdf

Mental Capacity Act 2005 (MCA)

- Key principles introduced by the MCA
- Every adult has the right to make his own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- A person should not be treated as lacking capacity to make a decision simply because they make an unwise decision.
- Any act done for a person who lacks capacity must be done in their “best interests”.
- Anything done for a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Capacity – case study

Jennifer aged 80 recently suffered a stroke which has left her with weakness in her right side and some memory problems. She decides to make an unrestricted lasting power of attorney (LPA). Her long term friend, Susan is appointed as her sole attorney. Alongside Jennifer, Susan has arranged for a care agency to care for Jennifer at home.

Over the next six months, Jennifer's memory worsens and on occasions is refusing to let the carers into her home saying she wants to be left alone and can cope without assistance.

Susan had promised Jennifer that, whatever happens, she would make sure she would be cared for at home.

Q. Can Susan move Jennifer into a care home?

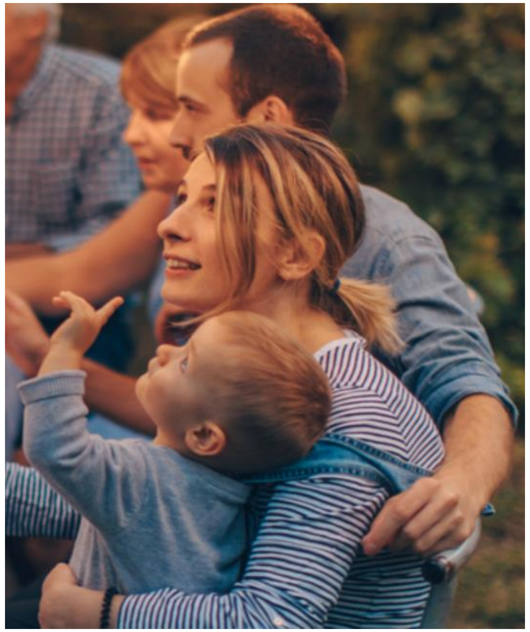
Things to consider

- Would have to establish on the balance of probabilities that she lacks the mental capacity to make decisions for herself
- Under MPA, she will lack capacity if she is unable to understand, retain, use and weigh relevant information about her residency.
- Danger of conflicting a capacity assessment with what they think is in Jennifer’s best interests
- To make decision on where a person will live requires a Health and Welfare LPA

Who needs a POA?

- Consider Power of Attorney for all clients

- Make sure everyone knows the rules…….!



The case of Miss Buckley

- When Miss Buckley was 80 she moved into a nursing home and executed an LPA.
- Her niece was appointed to be her sole attorney.
- Following the receipt of a complaint about the way in which the attorney was handling Miss Buckley's finances, the OPG opened a formal investigation into the matter.

The case of Miss Buckley

- The OPG’s investigator found that Miss Buckley’s house had been sold for £279,000 in April 2011.
- Between January and June 2011 the attorney had withdrawn £72,000 from Miss Buckley’s funds to set up a reptile breeding business.
- The attorney claimed that this was a short– term investment which would generate a 20% return over a two year period. Further investigations by the OPG suggested that nearly £88,000 had been invested in the reptile breeding business and over £43,000 misappropriated by the attorney.

The case of Miss Buckley

- Judge Lush said “There are two common misconceptions when it comes to investments. The first is that attorneys acting under an LPA can do whatever they like with the donors’ funds. And the second is that attorneys can do whatever the donors could – or would – have done personally, if they had the capacity to manage their property and financial affairs.”

“Managing your own money is one thing. Managing someone else’s money is an entirely different matter”.

The case of Miss Buckley

“Short–term investment codes are generally more appropriate where an individual has an anticipated life expectancy of five years or less, and previous guidance to court staff suggested that, “without clear medical evidence it would be prudent to consider a life expectancy of less than five years for new patients aged 80 or over.”

The case of Miss Buckley

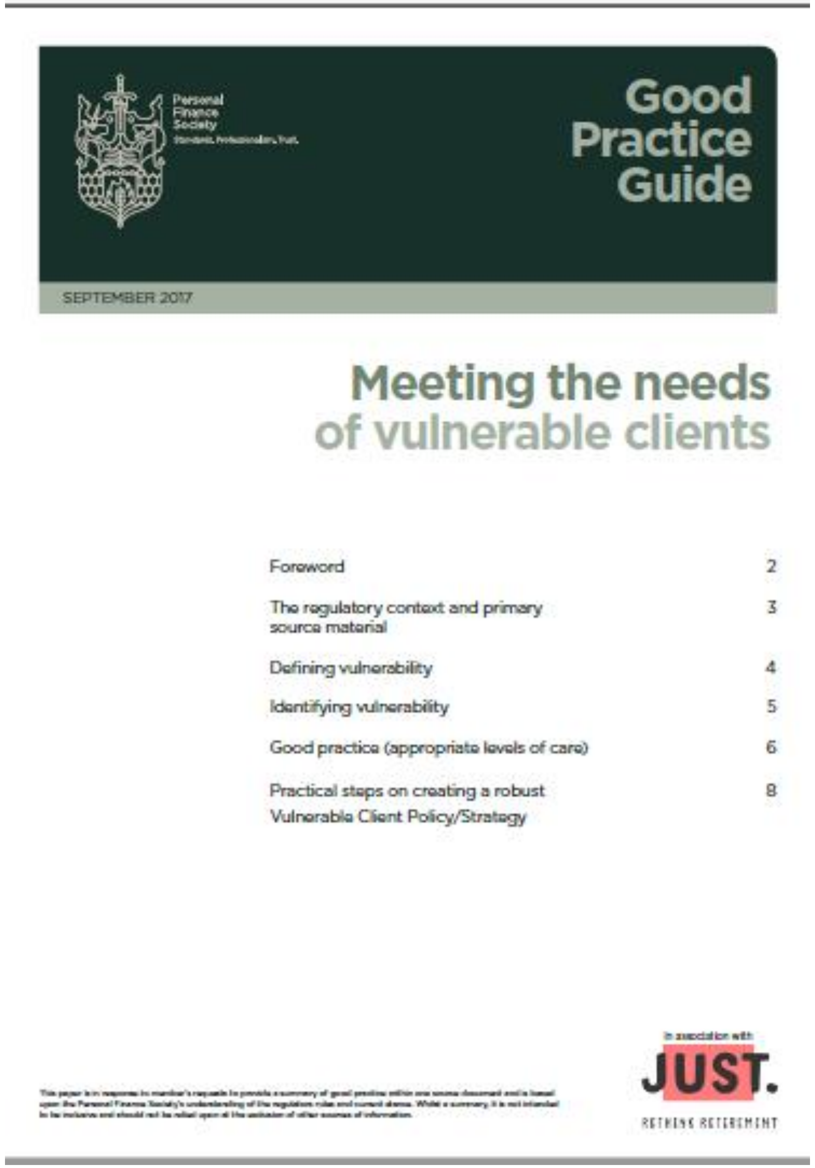
- Other factors to be considered are:

- (a) whether any major items of expenditure are anticipated or should be planned for,
  (b) whether any gifts or payments to dependants are likely to be made,
  (c) the type of return required. For example, whether a high income is needed from the investments, or whether the capital can be left to grow, or whether a mixture of the two would be more appropriate,
  (d) risk: whether absolute safety is required for the investment or whether some risk is acceptable in exchange for the possibility of getting a better return,
  (e) whether there is an existing portfolio and, if so, the tax and cost considerations that may affect decisions about whether to change it and how quickly,
  (f) the interests of beneficiaries under the patient's will or intestacy.

- **case law guidance regarding investment (Court of Protection No. 12228697)**

Other thoughts

- Complexity of product/Fund
- Build into review process
- Advising families
- Pension Freedoms will lead to people staying in drawdown longer
- Personal Finance Society guide invaluable


Personal Finance Society

Good Practice Guide

SEPTEMBER 2017

Meeting the needs of vulnerable clients

In association with

JUST.

RETHINK RETIREMENT

Time to close

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Thank you for your time

If you would like to give us feedback directly or request information not covered elsewhere please e mail us at

speakernotes@prudential.co.uk