

# Improving the quality of pension transfer advice

**Consultation Paper**

CP18/7\*\*

March 2018



## How to respond

We are asking for comments on this Consultation Paper by 25 May 2018.

You can send them to us using the form on our website at: <https://www.fca.org.uk/cp18-07-response-form>.

### Or in writing to:

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020 7066 8056

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### How to navigate this document onscreen



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takes you to helpful abbreviations

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# 1 Summary

## Why we are consulting

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- 1.1** Defined Benefit (DB) pensions, and other safeguarded benefits<sup>1</sup> involving guaranteed pension income, provide valuable benefits. Most consumers will be best advised to keep them and there is potential for significant consumer harm if unsuitable advice is given to consumers who are considering giving up these benefits.
- 1.2** This Consultation Paper (CP) follows on from our recent publications on advising on pension transfers: in particular, CP17/16<sup>2</sup> and PS18/6.<sup>3</sup> In CP17/16, we asked a number of discussion questions on a variety of topics, including qualification requirements for advisers and the responsibilities for advisers working together. We set out our responses to the feedback received in both this document and PS18/6 and we are now consulting on some of the areas discussed. In addition to the areas on which we sought views, a number of new issues were raised during the consultation. Our supervisory work<sup>4</sup> has also identified areas of poor practice, which we are tackling.

## Who this applies to

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- 1.3** This consultation will primarily be of interest to firms advising on pension transfers, those acting as pension transfer specialists, and pension providers receiving transfer business. The consultation may also be of interest to employer sponsors of DB schemes and employee benefit consultants. Organisations that provide related services, such as professional indemnity (PI) insurers and software providers, may also have an interest.
- 1.4** The new rules and guidance are intended to improve the quality of advice received by retail customers seeking to transfer or convert safeguarded benefits. So this CP may be of interest to consumers or groups representing them.
- 1.5** Providers of qualifications will be interested in reading Chapter 3.
- 1.6** All groups listed above (in particular, firms advising on pension transfers) will be interested in Chapter 6, which covers charging models.
- 1.7** This list of groups is not exhaustive and other industry practitioners and professional bodies may also have an interest in our proposals.

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1 DWP factsheet on "Pension benefits with a guarantee and the advice requirement", January 2016: "In practice, safeguarded benefits are any benefits which include some form of guarantee or promise during the accumulation phase about the rate of secure pension income that the member (or their survivors) will receive, or will have an option to receive." For the purposes of this document, references to transferring safeguarded benefits should be taken to include converting safeguarded benefits.

2 June 2017, Advising on pension transfers ([www.fca.org.uk/publication/consultation/cp17-16.pdf](http://www.fca.org.uk/publication/consultation/cp17-16.pdf))

3 March 2018, PS18/6: Final Policy Statement and Rules: Advising on pension transfers [www.fca.org.uk/publications/policy-statements/ps18-6-advising-pension-transfers](http://www.fca.org.uk/publications/policy-statements/ps18-6-advising-pension-transfers)

4 October 2017, Our work on defined benefit pension transfers ([www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers](http://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers))



## The wider context of this consultation

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- 1.8** DB pension transfers involve giving up valuable benefits. Our proposals aim to improve the quality of advice that consumers receive. We set out more detail on the wider context of this consultation in Chapter 2.

## What we want to change

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- 1.9** We are seeking views on the following proposals:
- amending the Pension Transfer Specialist (PTS) qualification (Chapter 3) and the exam qualification standards
  - amending the definition of a pension transfer (Chapter 3)
  - introducing guidance on how a PTS should work with another adviser in a two-adviser model (Chapter 4)
  - introducing guidance for firms on the advice boundary when providing triage services to prospective clients (Chapter 4)
  - introducing guidance on assessing clients' attitude to transfer risk (Chapter 5)
  - introducing rules requiring firms to provide suitability reports on a negative recommendation to transfer (Chapter 5)
  - amending the assumptions for valuing limited inflationary pension increases within a DB scheme (Chapter 5)
- 1.10** The intention of these proposals is to give firms greater clarity on the quality of advice we expect them to deliver to consumers who are seeking to transfer or convert safeguarded benefits. They are also intended to raise the standards of advice given.
- 1.11** In Chapter 6, we are also seeking views (but not proposing rule changes at this time) on charging structures associated with advising on pension transfers where we might make new rules or guidance in future.

## Outcome we are seeking

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- 1.12** If the interventions set out in this CP and in PS18/6 are successful, consumers should be more likely to receive suitable advice about whether or not to transfer based on their personal circumstances. This will help them to make informed decisions and give them confidence in the advice that is being provided.
- 1.13** Firms advising on pension transfers, conversions and opt-outs, or the investments that might be held if a transfer is made, should ensure they understand the outcomes we are seeking for consumers. Should the proposed changes be made following consultation, we expect firms to make relevant changes to their own processes to

comply with our new rules and guidance to ensure that consumers receive suitable advice. This includes how two firms work together when providing advice to a client.

## Measuring success

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- 1.14** Through our supervisory work on pension transfers, we will be able to assess whether our interventions are effective. We will measure a successful outcome by more pension transfer advice being assessed as suitable. We also hope to see firms improve their record keeping so that more of them can demonstrate suitability.
- 1.15** We also expect a reduction in the number of complaints against advisory firms and the number of customers becoming the victims of pension scams. Advisers should also have greater certainty and confidence about our expectations when providing pension transfer advice.

## Next steps

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### What you need to do

- 1.16** We want to know what you think of our proposals and discussion questions in this CP. Please send us your comments by 25 May 2018.

### How to send us your response

- 1.17** Use the online response form on our website, email us at cp18-07@fca.org.uk, or write to us at the address on page 2.

### What we will do next

- 1.18** We will consider your feedback and publish our finalised Handbook text in a Policy Statement no later than early Autumn 2018. We will also consider whether further action is required on charging structures based on the responses received to the discussion questions in Chapter 6. We will outline next steps in the Policy Statement.



## 2 The wider context

### The harm we are trying to address

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- 2.1** The introduction of pension freedoms in Defined Contribution (DC) pensions in 2015 has increasingly encouraged DB scheme members to consider transfers from DB to DC schemes. This has been exacerbated by concerns about the funding position of DB schemes. Since 2015, advice on DB pension transfers has been mandatory for all cases valued at over £30,000 (the majority of cases). Transfer value amounts offered by schemes have also been at record-high levels since June 2016. As a result of these developments, the demand for advice on DB to DC transfers has increased significantly.
- 2.2** Unsuitable advice to transfer out of a DB scheme may result in lower retirement income than the DB scheme would have provided, as well as the risk of running out of money sooner than expected.
- 2.3** In October 2017, we published the findings of our supervisory work on pension transfer advice, looking at transfers from DB to DC schemes.<sup>5</sup> In the files we reviewed, we found that only 47% of advice to transfer from a DB to a DC scheme could be shown to be suitable. In addition, only 35% of the products and funds recommended for the new scheme were deemed suitable. As a result of our work, a number of firms have voluntarily varied their permissions and have stopped advising on pension transfers.
- 2.4** Our work on Assessing Suitability<sup>6</sup> on general investment advice<sup>7</sup> found that 93.1% of advice could be shown to be suitable. In comparison, as set out in a letter from our Chief Executive Officer to the Chair of the Work and Pensions Select Committee in January 2018,<sup>8</sup> we found that only 51% of the advice provided to British Steel pension scheme members could be shown to be suitable. We also found that in 16% of the files, firms failed to demonstrate suitability.
- 2.5** Our findings on pension transfer advice demonstrate that there is considerable risk from unsuitable advice which may lead to significant harm for consumers.
- 2.6** Over 6 million people are eligible to transfer deferred benefits out of DB schemes. Employee benefit consultancies report the average size of a transfer is over £250,000. Therefore, there are very significant sums at risk if unsuitable advice is given. Average redress awarded by the Financial Ombudsman Service when upholding a claim for poor advice is around £58,000.<sup>9</sup>

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5 October 2017, Our work on defined benefit pension transfers  
([www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers](http://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers))

6 May 2017, Assessing suitability review ([www.fca.org.uk/publications/multi-firm-reviews/assessing-suitability-review](http://www.fca.org.uk/publications/multi-firm-reviews/assessing-suitability-review))

7 Refers to pension and investment personal recommendations, as set out in the Assessing Suitability review

8 January 2018, Correspondence to Work and Pensions Select Committee  
([www.fca.org.uk/publication/correspondence/fca-response-to-wpsc-statement-on-british-steel-pension-scheme.pdf](http://www.fca.org.uk/publication/correspondence/fca-response-to-wpsc-statement-on-british-steel-pension-scheme.pdf))

9 March 2017, GC17/1 - Changes to the way firms calculate redress for unsuitable defined benefit pension transfers  
([www.fca.org.uk/publication/guidance-consultation/gc17-01.pdf](http://www.fca.org.uk/publication/guidance-consultation/gc17-01.pdf))

- 2.7** Our supervisory work has also identified some business model features that were common cases of unsuitable advice. These included situations where two advisers work on different elements of a pension transfer. There was also a recurrent failure by firms in identifying and managing conflicts of interest.
- 2.8** In March 2018, we published PS18/6, setting out the feedback to CP17/16 and final Handbook rules and guidance. In this paper, we are consulting on areas where we asked discussion questions in CP17/16 and areas that were raised separately by respondents in feedback to CP17/16. We also address the further findings of our supervisory work.

### How the harm we are trying to address links to our objectives

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- 2.9** The Financial Conduct Authority's (FCA) strategic objective is to ensure that relevant markets work well. One of our operational objectives is to secure an appropriate level of protection for consumers. Ensuring that consumers receive suitable advice to allow them to make informed decisions about whether to give up safeguarded pension benefits falls within this objective. This in turn helps build consumer trust in the industry. The result of consumers receiving unsuitable advice could be receiving lower retirement income than the DB scheme would have provided, and/or running out of money in retirement sooner than expected.

### Wider effects of this consultation

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- 2.10** We want to provide advisers with a framework that better enables them to give suitable advice so that consumers make informed decisions about whether to give up their safeguarded benefits. The proposals set out in this CP are part of a package of remedies to deliver this framework. Firms should consider these proposals alongside the final rules and guidance we published in PS18/6.

### What we are doing

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- 2.11** Chapter 3 sets out our proposals on the PTS qualification and the definition of a pension transfer. Chapter 4 sets out our proposals for: taking account of the proposed destination of a client's transfer funds; and triage services. Chapter 5 sets out our proposals for: assessing a client's attitude to transfer risk, suitability reports for negative recommendations and pension increase assumptions.
- 2.12** We are seeking responses on these proposals and we also invite discussion (but do not propose any rules at this time) on charging structures associated with advising on pension transfers. These are considered further in Chapter 6.

### Equality and diversity considerations

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- 2.13** We have considered the equality and diversity issues that may arise from our proposals in this CP. Overall, we do not consider that the proposals in this CP adversely impact



any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.



## 3 Standards to meet before giving advice

**3.1** Before an adviser can advise on a pension transfer, conversion or opt-out, they need to be aware of our requirements, including the required qualifications and Handbook glossary definitions. In this chapter, we consult on changes to:

- the qualifications required to advise on or check pension transfers
- the standards applicable to the PTS qualification
- the definition of a pension transfer

### **Pension transfer specialist qualification**

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**3.2** In this section, we propose to require all PTSs to obtain the investment advice qualification and set out our rationale for this change. We are also consulting on changes to the appropriate exam standards (AES) for the PTS qualification itself, to reflect our updated rules and guidance, as well as more widespread changes to the pensions environment.

### **Requiring a PTS to have the investment advice qualification**

**3.3** Our rules require that a firm must ensure that all advice on pension transfers (excluding guaranteed annuity rates) is either given or checked by PTS. Advice on whether or not to transfer is distinct from the advice on investments (eg advising a client how their transfer funds should be invested).

**3.4** When a consumer requires advice on both activities, it will need to be given by suitably qualified advisers. This means the advice could be given in a variety of different ways:

- it could be given by one adviser who is a PTS and gives both advice on a transfer and the proposed destination scheme, including the underlying investments
- it could be given by one adviser who gives both advice on a transfer and the proposed scheme, including the underlying investments, but with the pension transfer advice being checked by a separate PTS (consistent with the checking requirements in our Handbook)
- the advice on investments could be given by one adviser while the advice on the pension transfer is given by the PTS

In both of the last two scenarios, the PTS may or may not have the investment advice qualification.

**3.5** When providing pension transfer advice, it is important to take account of the investments in which the clients' assets would be placed if a transfer was to proceed. A potential transfer cannot be properly assessed without taking account of where funds would be transferred. This should be done regardless of whether separate advice is being given on those investments by the same or a different adviser. There will be



some investment objectives and potential solutions which support a transfer and some that do not. These will vary depending on the client's individual circumstances.

- 3.6** While a PTS may not always be giving the investment advice, they need to be able to identify whether a proposed investment solution is consistent with the client's needs and objectives for the proposed transfer. This will require knowledge and understanding of the different types of investments available, along with their related risks and associated costs.
- 3.7** In CP17/16, we asked for views on how the current qualification requirements for PTSs operate in practice. Respondents listed a number of areas on which PTSs need more knowledge, in particular investment knowledge. Given the need for pension transfer advice to have regard to the receiving scheme and its investments, many respondents suggested that a PTS should also be qualified as an investment adviser.
- 3.8** We therefore propose that a PTS must hold the Level 4 Retail Distribution Review (RDR) qualifications for advising on investments before they can advise on or check pension transfer advice. There was significant support for this approach from those responding to a discussion question in CP17/16.
- 3.9** Some PTSs already have both qualifications. At present, qualification providers typically offer the PTS qualification as a Level 6 qualification. This is because advising on a pension transfer is generally considered more complex than advising on investments. We expect that those who do not have the qualification already will be those who became PTSs some time ago when the PTS qualification was a Level 3 qualification.
- 3.10** Some of the modules offered by qualification providers are common to both qualifications: for example, the section on financial services, regulation & ethics. We therefore expect that providers will allow PTSs to study for and sit examinations for discrete modules that they have not previously undertaken ('gap-filling') rather than having to re-study modules that have previously been taken. We recognise that gap-filling could be different for those who obtained PTS qualifications at various points in the past.
- 3.11** We are proposing that existing PTSs must acquire the additional qualification by October 2020. There will be no grandfathering, ie all PTSs without the investment advice qualification must achieve it in order to continue practising. We are not preventing PTSs without the investment advice qualification from practising prior to October 2020. However, firms should ensure that they are meeting their responsibilities for assessing and maintaining the competence of employees (Training and Competence sourcebook section, 2.1).<sup>10</sup>

**Q1: Do you agree with the proposed changes to the qualifications for a PTS? If not, how would you suggest we amend it?**

**Q2: Do you agree with our proposed arrangements for the transition period?**

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<sup>10</sup> TC2.1: [www.handbook.fca.org.uk/handbook/TC/2/1.html](http://www.handbook.fca.org.uk/handbook/TC/2/1.html)

### PTS exam qualification standards

- 3.12** In CP17/16, we said we would update the AES for pension transfer specialists in due course, to take account of the proposals made in that CP. As we have now made final rules and guidance on those proposals in PS18/6, we are now consulting on the necessary changes to our exam standards that are set out in ApEx 21.<sup>11</sup>
- 3.13** We propose to change the exam standard for ApEx 21 to take account of developments in the pensions landscape following the introduction of the freedoms and the mandatory advice requirement, as well as the rules and guidance in PS18/6 and proposed in this CP. The exam standard will, therefore, cover personal recommendations and advice boundary issues, appropriate pension transfer analysis (APTA) and transfer value comparator (TVC), overseas advice and taxation.
- 3.14** We have shared the proposed standard for ApEx 21 with a working group of qualification providers and industry practitioners. We took their feedback into consideration ahead of this consultation. Those who already hold the PTS qualification will not need to take exams based on the new syllabus. But it is the responsibility of firms to ensure that their advisers are aware of recent developments and have the necessary level of knowledge and experience in line with the requirements of our Training and Competence Sourcebook. The proposed changes to ApEx21 are set out in Appendix 1.

**Q3: Do you agree with the proposed changes to the appropriate exam standard ApEx 21? If not, how would you suggest we amend it?**

### The definition of a pension transfer

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- 3.15** We did not specifically ask for comments on the Handbook glossary definition of 'pension transfer'. But feedback we received to CP17/16 noted that the definition includes movements of some non-safeguarded benefits, potentially classifying them as transfers unnecessarily. Respondents felt this seemed inconsistent with the general requirements in Conduct of Business Sourcebook (COBS) 19.1 (Pension transfers, conversions and opt-outs). We acknowledged the inconsistency in the pension transfer definition in PS15/12.<sup>12</sup> The final rules published in PS18/6 (made following CP17/16) confirmed that the scope of COBS 19.1 was restricted to pension transfers involving safeguarded benefits.
- 3.16** Based on comments received, we consider that there is some merit in having a definition that aligns with the terminology used in the regulated activity of advising on pension transfers.<sup>13</sup> The regulated activity covers movement of safeguarded benefits to flexible benefits. So we propose to amend the pension transfer definition so that it is drafted with reference to safeguarded benefits and flexible benefits.
- 3.17** The proposed amendment will mean that the definition will only cover advice on transactions where flexible benefits are given up when the cancellation rules apply, ie in the same way as other pension switches. Where such switches involve an FCA-

11 Examination standards: [www.fca.org.uk/firms/training-competence/examination-standards](http://www.fca.org.uk/firms/training-competence/examination-standards)

12 PS15/12: Proposed changes to our pension transfer rules ([www.fca.org.uk/publication/policy/ps15-12.pdf](http://www.fca.org.uk/publication/policy/ps15-12.pdf))

13 Article 53E of the Regulated Activities Order: Advice on conversion and transfer of pension benefits: [www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi\\_9780111128237\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf)



regulated pension scheme (either ceding or receiving), personal recommendations will still need to meet our suitability requirements in COBS 9. We have created a new definition to incorporate FCA-regulated pension schemes just for the purpose of the pension transfer definition. We have also amended the existing references to an 'individual pension contract providing fixed or guaranteed benefits' and to a 'deferred annuity policy' with an overarching term of 'deferred annuity contract'.

- 3.18** The proposed amendment will mean that the definition will continue to include advice on transactions where safeguarded benefits are being given up for another form of safeguarded benefits. Advice on this transfer will be caught within the scope of COBS 19.1 where the ceding scheme is an FCA-regulated pension scheme.
- 3.19** Transfers of safeguarded benefits from Occupational Pension Schemes (OPS) to other fully safeguarded OPS schemes are not included within the regulated activities.
- 3.20** This proposal will have an impact on data that firms report to us in Product Sales Data (PSD). PSD requires pension providers to separately identify product sales that result from an 'individual pension transfer'. If our proposal goes ahead, firms will only be required to report transfers of safeguarded benefits in this category. All other pensions business, including pension switches, will be reported in the relevant product category, eg self-invested personal pension, personal pension. However, this change should not affect data reported in the Retirement Income Data Regulatory Returns.
- 3.21** There will be also some consequential changes, including record keeping and cancellation rights. As these will generally result in such switches being treated in the same way as other pension switches, we do not see the impact on consumers as material.

**Q4: Do you agree with the proposed changes to the pension transfer definition? Please indicate if you consider there are any other consequences that have not been identified.**

## 4 Preparing to give advice

**4.1** Before an adviser can advise on a pension transfer, conversion or opt-out, we expect them to have in place processes for dealing with clients and other stakeholders in a number of areas. In this chapter, we consult on changes that will require advisers to consider their processes for:

- taking account of the proposed destination of a client's transfer funds
- triage services

### **Taking account of the proposed destination of a client's transfer funds**

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**4.2** In this section, we clarify the role of the PTS in relation to the proposed destination of a client's transfer funds. That is, the investments in which the clients' assets would be placed if a transfer were to proceed. This includes the relationship the PTS has with another adviser firm that provides the investment advice. It also sets out our expectations for how pension transfer advisers should interact with a 'self-investor': an individual who is not taking investment advice but is taking advice on a transfer.

#### **Background**

**4.3** When advising on a pension transfer, the advice must take account of the proposed destination of the transfer funds if a transfer proceeded (COBS 19.1.2BR). This includes both the proposed scheme and the proposed investments in that scheme. In some cases a consumer will approach an investment adviser who then has to outsource the pension transfer advice. In other cases, advice on the proposed receiving scheme and its investments will be given by the same adviser as the transfer advice. In either scenario however, there will be instances where the consumer might want to choose the receiving scheme and investments themselves.

**4.4** Our rules do not prevent the pension transfer advice and the investment advice from being provided by two separate advisers. For overseas transfers, we stated in our January 2017 alert<sup>14</sup> that the UK adviser should liaise with the overseas adviser who is advising on the receiving scheme and investments, where necessary. As set out in PS18/6, we consider that the same principles for working together apply irrespective of whether the investment adviser is UK-based or overseas.

**4.5** As set out in Chapter 3, a PTS cannot know if a transfer will be suitable without understanding the implications of the destination for the transferred funds. To draw conclusions on the suitability of the pension transfer, a PTS:

- should review the proposed scheme and investment relative to both the client's attitude to transfer risk (see Chapter 5) and their attitude to investment risk (COBS 19.1.6G(4)(b) and(c))

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14 Advising on pension transfers – our expectations: [www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations](http://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations)



- needs to ensure that the potential returns and all relevant charges for the proposed scheme and investments, have been appropriately taken into account in the APTA (COBS 19 Annex 4A 3R)
- should consider whether there are alternative solutions that could meet the client's needs and objectives, either with less risk or without giving up the safeguarded benefit (COBS 19.1.6G(4)(e))

### **Working with another adviser**

#### ***Discussion from CP17/16***

**4.6** In CP17/16, we set out our expectations on the responsibilities for advice in two common outsourcing models. These are where:

- an outsourced PTS checks the advice prepared by another adviser
- the pension transfer advice and liability is entirely outsourced to another firm, sometimes with the referring adviser firm keeping an advisory role by giving the overall advice on the destination of funds

**4.7** We asked two discussion questions seeking views on our expectations of the responsibilities of firms in these models. We said that our expectation in the first model was that the adviser giving the overall advice remains responsible for the suitability of the advice, including the advice checked by the PTS. In the second model, we said that both firms must be able to demonstrate that the individual advice they provide is suitable for the client.

#### ***Feedback from respondents to CP17/16***

**4.8** The majority of respondents agreed that our expectations were logical, but a significant number asked for clarification on a number of areas. These areas included:

- whether the same expectations apply to overseas transfers
- the relative role of each adviser in assessing attitude to risk
- the provision of pension transfer advice to consumers who choose their own investments (self-investors) rather than take investment advice

**4.9** Many respondents queried whether a model involving two advisers could work at all, and felt that proper advice could only be given if a single adviser was providing all services. Other respondents believed that two advisers can work together and referenced other areas where these models are the norm and work effectively. These included the medical profession, where GPs outsource to specialists, or the accountancy and legal professions.

**4.10** A number of respondents queried where the liability lies when two advisers are involved. They commented on the potential for consumer confusion about the responsibilities and liabilities between the PTS and the other adviser. Respondents also highlighted the risk of one of the advisers actioning a subsequent transfer for the customer to a different fund than the one on which the transfer advice was based.

**4.11** Some respondents wanted more clarity on how to handle disagreements where the PTS carries out all the transfer advice and another adviser provides the investment

advice. Other respondents highlighted the poor consumer outcomes which can result from two advisers not working sufficiently closely together.

### ***Our expectations***

- 4.12** Where two advisers are working with the same information about the client, there are less likely to be conflicts between the advisers about whether the proposed scheme is suitable for the client given their circumstances. However, information set out in a fact find and risk profile may not always be sufficient for the PTS to consider whether the transfer is suitable. In this case, the PTS should liaise with the adviser who has directly spoken with the client in order to obtain the further details required; alternatively, the PTS should aim to speak directly with the client.
- 4.13** In our supervisory work, we have identified that the information gathered about the client will frequently be focused on their attitude to investment risk. This is particularly likely if the information is gathered by the investment adviser.
- 4.14** The information on the client's attitude to transfer risk should inform both the pension transfer advice and the associated investment advice. This means that the transfer advice should take into account the risks of giving up a valuable benefit; and the investment advice should take into account the fact that the client would no longer have a safeguarded benefit if the transfer proceeded.
- 4.15** Firms who use these models should ensure robust arrangements and processes are in place with other firms they work with, so that roles, responsibilities and liabilities are clear. For example, responsibility for implementing the transfer itself, establishing liability if funds are not transferred to the expected destination fund and how disagreements between adviser firms are handled. Contractual arrangements and file records that state each adviser's actual role in providing advice are likely to be helpful if there is a complaint. It is important to be aware that firms cannot outsource any liability for the actual advice they have provided.
- 4.16** As well as expecting firms to have appropriate processes in place for working with each other, we expect firms to take a joint approach to ensuring the client is clear on each adviser's role. Where the outsourcing of advice may lead to delays, firms should inform consumers of likely timescales at the outset. This is particularly relevant where there is a risk that the consumer may need to request (and pay for) an updated cash equivalent transfer value (CETV).
- 4.17** We are proposing Handbook guidance to make clear our expectations where one firm (or employee) advises on the transfer and another firm (or employee) advises on the proposed investments. The intent of the proposed guidance confirms we expect all parties to work together to:
- collect necessary information, to inform both the pension transfer advice and the associated investment advice
  - undertake risk profiling, which assesses both the client's attitude to transfer risk and attitude to investment risk
  - recognise that the investment advice should take into account the impact of the loss of any safeguarded benefits on the retail client's ability to take on investment risk



**Q5: Do you agree with our proposed guidance for advisers working together? If not, how should we amend it?**

**Advising a self-investor**

- 4.18** Our rules and guidance do not prevent advisers from advising self-investors. Self-investors are clients who choose their own proposed scheme and investments. Typically, they are seeking to consolidate their pension arrangements in one place and already have an existing arrangement set up with their own preferred provider. They will therefore approach an adviser seeking advice on the transfer to their existing DC pension arrangement.
- 4.19** We have already stated that when giving pension transfer advice, we expect an adviser to have regard to the proposed scheme and investments. This includes the risk, possible returns and charges for the proposed scheme. Our expectations are the same when advising self-investors. These are consumers who do not require advice on the destination funds as they already have a chosen arrangement in place, or planned. This means that self-investors must provide the adviser with sufficient information on the proposed scheme and investment. An adviser will need to take that information into account when assessing the merits of the transfer out of the safeguarded benefits scheme. Without this information, it is unlikely that an adviser will be able to provide a suitable recommendation on transferring for a self-investor.
- 4.20** We do not consider that our rules or guidance need changing to specifically address the advice process when advising a self-investor. We recognise that there are implications for self-investors who will need to get the necessary information on the proposed destination scheme and funds and share this with their adviser, even if they are not looking for advice on the destination scheme itself. However, this information will generally be readily available as personal and stakeholder pension schemes should already provide sufficient information in the Key Features Documents, Key Features Illustrations, and fund guides.
- 4.21** We know that some advisers are reluctant to advise self-investors because of potential regulatory liability. We think our expectations are clear on the following:
- We expect advisers to advise on a pension transfer taking into account the proposed destination of the funds. Where the destination is put forward by the client themselves, the situation is no different except that the adviser will have to make clear that the client needs to provide the necessary information about the scheme and its underlying investments.
  - Where a transfer is unsuitable in principle, but not specifically in relation to the proposed destination, the adviser should explain the basis for the recommendation. Where the transfer is unsuitable specifically as a result of the proposed destination, the adviser should explain that a transfer may be suitable if a different destination for the funds was selected. If the adviser expresses an opinion on how to amend the proposed destination, it is likely to be investment advice (Perimeter Guidance (PERG) 8.28.1G).

**Q6: Do you have any comments on our explanation for advising self-investors?**



## Triage services

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### Background

- 4.22** Many advisers operate a triage service as part of their DB transfer advice process. Triage is where firms have an initial conversation with potential customers. The purpose of triage is to give the customer sufficient information about safeguarded and flexible benefits to enable them to make a decision about whether to take advice on the transfer or conversion of their pension benefits.
- 4.23** Some firms told us that they undertake triage so that consumers do not spend money on advice unnecessarily. Other firms told us they do not provide a triage service due to uncertainties about how it fits with the advice boundary.
- 4.24** We consider that triage can be useful to educate consumers on some of the basic features of different types of pensions and the transfer process, including the costs involved. We agree that, when used appropriately, it can prevent consumers from paying advice charges unnecessarily. It may also address some of the advice supply issues in this market, as it enables advisers to focus on clients with a realistic prospect of transferring.
- 4.25** However, when reviewing firms' triage services, we have found that some forms of triage may be inadvertently crossing the advice boundary. For example, if an adviser tells a client that they should not be transferring their DB benefits at the end of the triage service, this is likely to be regulated advice. Similarly, if an adviser tells a client that it is unlikely that a transfer would be recommended if the client took regulated advice, this in itself may be an implicit recommendation to stay in the ceding scheme.
- 4.26** Therefore, we are consulting on new guidance in PERG on how firms can provide an appropriate triage service that gives factual and generic information without stepping across the advice boundary. For the purposes of this section, the advice boundary refers to advice on a pension transfer or conversion that falls within Article 53E of the Regulated Activities Order (RAO). Firms would be able to apply similar principles for pension opt-outs and for those transfers that fall under the regulated activity of advising on investments in Article 53 of the RAO.

### Our proposals

- 4.27** In our view, if triage is to be a non-advised service, it should be an educational process so that consumers can decide whether to proceed to regulated advice. Firms can achieve this by providing generic, balanced information on the advantages and disadvantages of pension transfers.
- 4.28** Even if a client tells a firm about their personal circumstances, if the firm wishes to avoid giving advice it should not comment at the triage stage on whether they should consider a transfer based on this information. If an adviser gives an opinion on how a consumer's individual circumstances may affect advice on transferring, it is more likely that regulated advice is being provided. We also think it would be helpful in any triage service for firms to explain the transfer process and the total charges that might be incurred, both if a transfer proceeds and if it does not.
- 4.29** We consider that it would be good practice for firms to keep records where triage has been provided and the form that it took. This is likely to be in firms' interests in case of future complaints.



**4.30** In our proposed guidance in PERG 12.6 (Advising on conversion or transfer of pension benefits),<sup>15</sup> and PERG 12 Annex 1G we provide our view on examples of what is and is not advising on conversion or transfer of pension benefits. Firms will be aware that we have recently published perimeter guidance<sup>16</sup> on what amounts to a personal recommendation in relation to Article 53 of the RAO<sup>17</sup>. The proposed perimeter guidance in this CP differs from our earlier guidance, as it deals with advising under Article 53E of the RAO. It provides specific guidance on the triage service for pension transfers which is not otherwise addressed in PERG.

**Q7: Do you agree with our proposed guidance on triage? If not, how could we approach it differently?**

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15 [www.handbook.fca.org.uk/handbook/PERG/12/6.html](http://www.handbook.fca.org.uk/handbook/PERG/12/6.html)

16 February 2018, Perimeter guidance on personal recommendations on retail investments ([www.fca.org.uk/publication/policy/ps18-03.pdf](http://www.fca.org.uk/publication/policy/ps18-03.pdf))

17 Regulated Activity Order ([https://www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi\\_9780111128237\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf))

## 5 Providing advice

**5.1** In this chapter, we consult on changes to the way in which advice is provided to consumers, including:

- assessing a client's attitude to transfer risk (note, references to transfers in this section include conversions and opt-outs<sup>18</sup>)
- suitability reports for negative recommendations
- pension increase assumptions

### Assessing a client's attitude to transfer risk

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#### Background

**5.2** From our supervisory work, we know that many advisers rely on software to assess their clients' attitude to risk. But these tools usually focus on assessing attitude to investment risk to construct a portfolio for funds that have already been earmarked for investment. These tools are often less appropriate for determining the more fundamental issue of whether a client should move from a safeguarded benefit scheme to a flexible benefit scheme in the first place. Questions (including software) that focus on the investment risks alone do not adequately address the transfer risk. We expect advisers to focus on the client's attitude to both the features of a safeguarded benefits scheme and the features of a flexible benefits scheme.

**5.3** We also expect firms to use language that is not biased either in favour of transferring to a new scheme or remaining in a scheme. For example, we are likely to view questions that only explore a client's attitude for flexibility or control as being biased in favour of a transfer. In that example, we would also expect firms to assess a client's attitude to certainty of income and not having to make decisions about the management of their funds that will last for the rest of their lives in retirement.

**5.4** A number of respondents to CP17/16 were concerned that attitude to risk assessments are focused on attitude to investment risk. They felt that attitude to transfer risk should be considered independently.

**5.5** Therefore, we are proposing to clarify our Handbook guidance to set out our expectations that advisers should explore each client's attitude to the general risks associated with a transfer, as well as their attitude to investment risks.

#### Our proposals

**5.6** Our proposed guidance complements our existing guidance on assessing attitude to risk.<sup>19</sup> The intent of the new guidance is that when firms are considering the client's attitude and understanding of giving up safeguarded benefits for flexible benefits, they should take into account:

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<sup>18</sup> A conversion is where a safeguarded benefit is changed to a flexible one within the same pension scheme  
<sup>19</sup> [www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf](http://www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf)



- the risks and benefits of staying in the safeguarded benefit scheme
- the risks and benefits of transferring to a flexible benefits scheme
- the client's attitude to certainty of income throughout retirement
- whether the client is likely to access funds in flexible benefits in an unplanned way, and the impact of that on the sustainability of the funds over time
- the client's attitude to any restrictions on their ability to access funds in a safeguarded benefits scheme
- the client's attitude to and experience of managing investments themselves or paying for them to be managed in a flexible benefit scheme

The proposed guidance also sets out that we expect firms to consider the client's attitude to transfer risk:

- in a way which is fair, clear and not misleading, and
- irrespective of whether or not relevant factors are included within risk profiling tools or software

**Q8: Do you agree with our proposed guidance on assessing attitude to transfer or conversion risk?**

## Suitability reports for negative recommendations

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- 5.7** Our rules do not currently require firms to provide suitability reports when they give a recommendation not to transfer. We are now proposing that firms provide a suitability report regardless of the outcome of advice. This proposal applies to transfers and conversions.
- 5.8** In our view, advice is a valuable service. Providing a client with certainty that it is not in their best interests to transfer, and setting out the reasons why, is just as constructive as an outcome with a recommendation to transfer. An adviser will have considered a client's retirement income objectives and needs, and reached the conclusion based on their personal circumstances. While we recognise that there may be a modest increase in charges for some consumers, depending on the charging model, we consider that it is important for consumers to receive a suitability report that summarises the issues, regardless of the conclusion. They will also have a record of the reasons why remaining in a safeguarded benefits scheme is the most suitable outcome for them.
- 5.9** The proposal is also consistent with our recently issued Handbook guidance on insistent clients.<sup>20</sup> A suitability report will clearly set out the client objectives and issues that have been taken into account, and how these have led to the recommendation not to transfer. It should also assist advisers in dealing with any future disputes that might arise if a consumer complains about the advice.

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<sup>20</sup> [www.fca.org.uk/publication/policy/ps17-25.pdf](http://www.fca.org.uk/publication/policy/ps17-25.pdf)

**5.10** We also consider that it is appropriate to provide an advice confirmation<sup>21</sup> in the case of both positive and negative recommendations. We have proposed modifications to the existing Handbook guidance to reflect this.

**Q9: Do you agree with our proposals to modify the Handbook rules and guidance in respect of suitability reports and the advice confirmation?**

### Pension increase assumptions

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**5.11** The TVC requires assumptions to be made regarding increases applied to scheme benefits. In CP17/16, we asked for views on the following:

- The relative level of the Retail Price Index (RPI) and Consumer Prices Index (CPI) assumptions used to project future benefits (in the TVC) between the date of the employee leaving the scheme and the date on which the benefits commence.
- The level of the current assumption for certain limited pension increases offered by the ceding scheme. The assumption is needed for the TVC when determining the cost of replicating the ceding scheme benefits in a DC environment. These are pension increases that grow in line with an inflation index, such as the RPI or CPI, but also have both upper and/or lower limits (caps and collars). Stakeholders had previously told us that our existing assumption for these types of increases may overvalue pension increases where there is a high cap.

The assumptions are also likely to be relevant when preparing an APTA.

**5.12** The majority of respondents did not comment on the assumption for limited inflationary pension increases. However, some made the following suggestions for improving the assumption:

- use fixed increases instead of inflation-linked increases, given the lack of annuities with caps and collars
- use fixed rate increases at the collar, for collars above the relevant RPI/CPI rate (and the same for caps below the RPI/CPI rate), with all other increases valued at RPI/CPI
- undertake two TVCs at the maximum and minimum pension increase rates
- use forward inflation rates, based on market data
- use Black-Scholes<sup>22</sup> methodology to derive suitable rates

**5.13** Based on the feedback received, we propose a change to the existing assumption. We propose that firms should use fixed rate increases at the collar for collars above the relevant RPI/CPI rate, and at the cap for caps below the RPI/CPI rate. All other increases should be valued at RPI/CPI.

**Q10: Do you agree with our proposal on pension increase assumptions?**

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<sup>21</sup> Required under Section 48 of the Pension Schemes Act 2015.

<sup>22</sup> A mathematical model used to determine fair pricing of financial instruments



## 6 Discussion: Charging structures associated with advising on pension transfers

**6.1** In this chapter, we discuss the different charging structures used in pension transfer advice. We focus on the potential consumer harm that may occur when contingent charging structures are used. We then set out possible ways of intervening in the way charges are set. We also discuss whether intervening on charges is an appropriate response to the broader harm of unsuitable advice. We are seeking views on these questions, and not proposing rule changes yet, but may do so following responses.

### Contingent charging: what is the harm?

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**6.2** In its purest form, a contingent charging arrangement is one where an adviser is only paid by a consumer if a transfer takes place, ie consumers who do not transfer are not charged for any of the advice they receive. Consumers who do transfer are frequently charged a percentage of the CETV (eg 3%); sometimes, however, the charge is expressed in fixed monetary terms.

**6.3** As well as this pure form of contingent charging, we have also seen contingent charging models where consumers who do not transfer pay significantly lower amounts or percentages than those who transfer. (There is often a minimum charge for the transfer value analysis). When we refer to 'contingent charging' we are referring to all these types of charging models.

**6.4** The alternative to a contingent charging model is where all clients are charged the same amount regardless of whether they transfer or not. The fee is generally expressed in fixed monetary terms, although percentages of CETV can also be used. In some cases, there is a separate implementation fee applied to reflect the additional costs incurred when a transfer proceeds. The position is further complicated where two advisers are involved; in this case, there may be a mix of contingent and non-contingent charges applied.

**6.5** Contingent charging results in cross-subsidies: the cost of advice for consumers who do not transfer is cross-subsidised by those who do transfer. The degree of cross-subsidy varies depending on the precise charging model. However, customers who transfer will generally pay higher fees where there is contingent charging, compared to where charges are non-contingent (ie all consumers are charged the same regardless of whether they transfer or not).

**6.6** Some firms that advise exclusively on pension transfers have the purest form of contingent charging model, which is entirely dependent on a proportion of clients transferring. We consider that this model has the greatest potential to incentivise unsuitable advice as such a firm would not be viable if it did not recommend a minimum number of transfers each year.

- 6.7** We did not comment on the way in which firms levy charges for pension transfer advice in CP17/16. Despite this, respondents to the consultation provided significant feedback on contingent charging and its potential for consumer harm. Respondents highlighted the conflict of interest in the model (the misalignment of incentives between advisers and consumers). In particular, the increased incentive for advisers to:
- recommend a transfer
  - only recommend products where ongoing advice charges can be deducted
- 6.8** We require advisers to manage conflicts of interest, including those created by contingent charging structures. We expect firms to manage these conflicts and clearly disclose conflicts to consumers. Our supervisory work on pension transfer advice (described in chapter 2) suggests that firms may not be managing the potential conflicts arising from their charging structures.
- 6.9** We acknowledge that the causal link between contingent charging and unsuitable advice is not clear-cut. It is generally hard to show that unsuitable advice is due to firms using contingent charging models.
- 6.10** The Work & Pensions Select Committee also highlighted concerns about the inherent conflicts of interest arising from contingent charging when it reported its findings following an inquiry into the British Steel Pension Scheme (BSPS).<sup>23</sup> The Committee specifically called for a ban on contingent charging, based on the evidence it gathered during its inquiry into BSPS.
- 6.11** The Financial Ombudsman Service and professional indemnity (PI) insurers have also said that they see contingent charging as one of the most significant risks contributing to poor advice.

### Is pension transfer advice different?

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- 6.12** Our rules on adviser charging are set out in COBS 6.1A.<sup>24</sup> The current rules permit contingent charging. However, we are considering whether pension transfer advice has unique features that require a different approach to charging. For example:
- in most cases, unlike investment advice, the right outcome will be for the customer not to take any action (ie not to transfer)
  - most pension transfer advice is mandatory, rather than sought voluntarily
  - it involves an irreversible decision to give up a valuable benefit
  - as a result, it often involves consumers with little financial expertise, rather than those actively seeking to engage with the investment and advice process
  - the potential for longer-term harm is particularly great, as the advice will directly affect the client's income throughout their retirement

<sup>23</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/828/82802.htm>

<sup>24</sup> [www.handbook.fca.org.uk/handbook/COBS/6/1A.html](http://www.handbook.fca.org.uk/handbook/COBS/6/1A.html)



- 6.13** Many consumers are often reluctant to take advice about the transfer and do not see the merits of advice. As a result, they are frequently unengaged and focused more on finding an adviser who can help them access their CETV than on finding one to help them to decide whether to transfer based on their personal circumstances.
- 6.14** Most customers receiving advice on investments are not giving up a valuable benefit. Instead, they are looking to move savings to investments or reallocate existing investment funds.
- 6.15** As noted above, we have been told that consumers seeking pension transfer advice often have little financial expertise. They can be swayed by the CETVs on offer, often seeing them as large relative to the value of income. They may have been influenced by information that promotes the benefits, rather than the risks, of a transfer by highlighting concerns about the ability of their pension scheme to pay benefits.
- 6.16** These behaviours reflect common consumer biases, such as making poor decisions that are not in their long-term interests when comparing present and future values. There are also indications of optimism bias involving misjudging probabilities of future events, including life expectancy and the risk of running out of funds in retirement. Behavioural biases can interact with information asymmetries. In addition, for most people, deciding on a pension transfer is likely to be a one-off event for which they have no prior experience. These biases are explained in more detail in section 7 of the cost benefit analysis in this paper.
- 6.17** In our view, contingent charging can take advantage of these biases. It can distance consumers from the fee such that they do not realise that a sizeable amount is being charged. This is because payment of the charge occurs at the end of the transaction, and is dwarfed by the transfer value in most cases.

### **Should there be restrictions in the way charges can be levied?**

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- 6.18** Given the potential harm to consumers, we are considering if it is necessary to intervene in the way charges are levied for pension transfer advice. This could mean a ban on contingent charging. Other options are set out below (paragraphs 6.28-6.30).
- 6.19** There are a number of complexities in determining how any ban on contingent charging might work in practice. This is because advice to a consumer usually involves two key services: a) advice to transfer and, b) advice on investments (ie advice on the proposed destination scheme and investments within that scheme). In addition, advisers often charge implementation fees (covering the adviser's time in ensuring that the transfer is processed) if a transfer proceeds. There are further complexities if the advice model is an outsourced model with two advisers or more.
- 6.20** For example, if we banned contingent charging for pension transfer advice alone, but not for advice on the destination scheme and investments, there would still be an incentive to recommend a transfer, particularly where one adviser gives both pieces of advice. There would also be the opportunity for this adviser to 'game' the process by charging a nominal amount for the pension transfer advice and loading the majority of costs into contingent investment advice charges and/or any implementation charges.



- 6.21** Where the pension transfer advice and the investment advice and/or implementation services are provided by two separate advisers, the incentive to recommend a transfer is reduced and there are fewer 'gaming' opportunities.
- 6.22** We have considered various combinations of banning contingent charging on the pension transfer advice and/or the associated investment advice and/or implementation charges. However, we are mindful that the way in which a ban is applied may impact the way in which one-adviser and two-adviser models operate in practice. (see Chapter 3).
- 6.23** If we do not ban contingent charging on all three services outlined above, advisers may be able to 'game' the system, as set out in 6.20 above. One option is to require that charges for one or more of the different services be no greater than the cost of providing each service. We are conscious that this would be an additional requirement on firms and may be difficult to supervise effectively.
- 6.24** The different combinations of options would also have different impacts on the precise level at which advice charges would be set. We are aware that any form of ban on contingent charging is likely to have implications for consumers' ability to access advice. It could be in some consumers' interests to transfer, but they may be disincentivised to seek advice by the immediate high cost of advice. Some consumers may not have the available cash to meet the cost of advice, although an inability to meet these costs may be an indication of a low capacity for loss, which might mean that a transfer is inappropriate for them.
- 6.25** The extent of any potential access issue would depend on the scope of any intervention and any resulting impact on charges. We consider that this could be addressed to some extent by effective forms of triage, as outlined in Chapter 4, ie reducing the number of consumers who choose to seek advice and who therefore incur advice charges.
- 6.26** We are also conscious that a ban on contingent charging at the point of transfer would not remove the incentive to recommend a transfer for those advisers who are likely to be retained to provide ongoing advice services in relation to the transferred funds. This is particularly likely where all elements of the advice are given by one adviser.
- 6.27** While implementing a ban on contingent charging raises a number of issues such as access to advice, these need to be balanced against the potential benefits of a ban on contingent charging, ie a reduction in unsuitable advice.

## Other options

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- 6.28** There is an argument that, despite the unmanaged conflicts of interest, charges are not the root cause of poor advice. Consequently, it is possible that additional regulation addressing the conflicts of interest associated with contingent charging may not be effective in reducing the proportions of unsuitable advice more broadly. Our supervisory work has identified that pension transfer advice files reviewed since



pension freedoms have constantly shown that more than 30% of the advice was unsuitable (excluding files that were unclear).<sup>25</sup>

- 6.29** It could be considered that our current rules, together with the changes effected by PS18/6 and proposed elsewhere in this CP (and in supervisory work), should be sufficient to improve the quality of advice. We note, however, that better-quality advice that results in fewer transfers could, in itself, increase fees under contingent charging models, as there would be fewer paying customers to cross-subsidise the free or reduced cost of advice given to those who do not transfer.
- 6.30** Remuneration packages which increase advisers' pay depending on the numbers of transfers that proceed may also be a driver of poor advice. Respondents may consider that we should increase our focus on this area.

- Q11:** Do you think that contingent charging increases the likelihood of unsuitable advice? If so, can you provide any evidence to support intervening in the way pension transfer advice is charged, or would another approach be more effective?
- Q12:** If we proceeded to restrict the way in which pension transfer advice can be charged, do you have views on how this should be implemented? In particular, how could we avoid different forms of restriction from being 'gamed'?
- Q13:** How would different forms of restriction on pension charging impact consumers and firms? Are there any ways in which we would mitigate any negative impact? For example, to address concerns about reduced access to advice (due to increased advice costs for consumers who do not transfer), could we require firms to 'signpost' consumers to internal or external guidance/triage services, including The Pensions Advisory Service?

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<sup>25</sup> Findings summarised in [www.fca.org.uk/publication/correspondence/fca-response-to-wpsc-statement-on-british-steel-pension-scheme.pdf](https://www.fca.org.uk/publication/correspondence/fca-response-to-wpsc-statement-on-british-steel-pension-scheme.pdf)

## Annex 1

### Questions in this paper

- Q1:** Do you agree with the proposed changes to the qualifications for a PTS? If not, how would you suggest we amend it?
- Q2:** Do you agree with our proposed arrangements for the transition period?
- Q3:** Do you agree with the proposed changes to the exam qualification standard, ApEx 21? If not, how would you suggest we amend it?
- Q4:** Do you agree with the proposed changes to the pension transfer definition? Please indicate if you consider there are any other consequences that have not been identified.
- Q5:** Do you agree with our proposed guidance for advisers working together? If not, how should we amend it?
- Q6:** Do you have any comments on our explanation for advising self-investors?
- Q7:** Do you agree with our proposed guidance on triage? If not, how could we approach it differently?
- Q8:** Do you agree with our proposed guidance on assessing attitude to transfer or convert risk?
- Q9:** Do you agree with our proposals to modify the Handbook rules and guidance in respect of suitability reports and the advice confirmation?
- Q10:** Do you agree with our proposal on pension increase assumptions?
- Q11:** Do you think that contingent charging increases the likelihood of unsuitable advice? If so, can you provide any evidence to support intervening in the way pension transfer advice is charged, or would another approach be more effective?
- Q12:** If we proceeded to restrict the way in which pension transfer advice can be charged, do you have views on how this should be implemented? In particular, how could we avoid different forms of restriction from being 'gamed'?



- Q13:** How would different forms of restriction on pension charging impact consumers and firms? Are there any ways in which we would mitigate any negative impact? For example, to address concerns about reduced access to advice (due to increased advice costs for consumers who do not transfer), could we require firms to 'signpost' consumers to internal or external guidance/triage services, including The Pensions Advisory Service?
- Q14:** Do you have any comments on our cost benefit analysis?

## Annex 2

# Cost benefit analysis

### Introduction

1. The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs together with an analysis of the benefits' if the proposed rules are made. It also requires us to quantify the costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

### Market failure analysis

2. As set out in this paper, and in CP17/16, it is our view that transfers and conversions and opt-outs of safeguarded benefits remain unlikely to be in the best interests of most consumers.
3. The mandatory requirement to receive advice should make it more likely that consumers make choices that are in their long-term interest. Nevertheless, as already highlighted in the CBA in CP17/16,<sup>26</sup> market failures and behavioural issues make this more difficult to attain.
4. Asymmetric information puts consumers at a disadvantage with respect to advisers and, possibly, pension schemes managers.
5. Consumers are often less knowledgeable about the quality of advice and the impact of unsuitable advice for them. They may overlook, or not understand, the possible incentives for advisers to recommend a transfer. Furthermore, consumers often have a strong desire to access money from their pension so a recommendation to transfer is often what they want to hear.
6. There is evidence to suggest that ceding pension schemes looking to reduce their liabilities 'frame' transfer options to entice consumers to transfer, boosting the impacts of behavioural biases described below.
7. Behavioural biases tend to boost the desire to transfer money out of DB schemes:
  - a. **Present bias** leads a consumer to overlook long-term needs and focus on the satisfaction of immediate, more pressing desires and aspirations. Consumers affected by this bias will underestimate the benefits of a safe stream of income in the future, when compared with a more appealing 'large amount' in one go now.
  - b. **Aversion to regret and to perceived losses** will reinforce the desire of an immediate amount, especially with the media coverage on issues surrounding the viability of DB schemes.
  - c. **Framing** reinforces the previous effects, especially if pension scheme managers who are looking to de-risk seek to make consumers focus on apparently high transfer values.

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26 See section 2 of the CBA in CP17/16: [www.fca.org.uk/publication/consultation/cp17-16.pdf](http://www.fca.org.uk/publication/consultation/cp17-16.pdf)



**d. Bounded rationality and limited attention** lead to other systematic biases –in particular, underestimating life expectancy and, as a result, underestimating the value of lifetime income streams.

### Position under current rules

8. When the pension freedoms were introduced, the Government also legislated to require advice to be taken before an individual could transfer or convert safeguarded benefits.
9. Conduct of Business (COBS) rules that apply to advice on transfers and conversions of safeguarded benefits (as well as to the underlying requirements for giving advice on investments) have developed over time as the market and regulatory landscape have evolved.
10. However, our policy intention has remained constant: to make sure that consumers receive advice that enables them to make an informed decision about giving up their safeguarded benefits.
11. If the interventions set out in this CP are successful, more consumers should, over time, receive suitable advice about whether to transfer based on their personal circumstances. This will help consumers to make an informed decision as to whether to transfer and give them confidence in the advice that is being provided.
12. The introduction of the pension freedoms required some changes to our existing rules and guidance in order to continue to meet that intention. We therefore consulted on the impact of such changes in CP17/16 based on market developments and asked various discussion questions, and set out our policy position in PS18/6.
13. In response to discussion questions raised in CP17/16, additional feedback from respondents, and the findings of our supervisory work, we are consulting in this CP on further changes to ensure an appropriate regulatory framework for advising on pension transfers.

### Assumptions

14. We set out below the main assumptions we use in calculating the costs and benefits of our proposals and the rationale for these assumptions.
15. We have made the following assumptions about the advice market:
  - 100,000–120,000 advice transactions for DB to DC transfers per annum.<sup>27</sup>
  - Average size of transfer value is assumed to be £250,000.<sup>28</sup> This is based on data published by a variety of providers and consultancies.
  - On average, 1 in 3 consumers who receive advice choose to transfer, as assumed in CP17/16. This is an average across the market; the figure may well vary according to charging model. The ratio may also change in the future, particularly as behaviour may change if our proposals are adopted.

<sup>27</sup> We assumed 80,000–100,000 in CP17/16, but believe volumes are now higher.

<sup>28</sup> Figures based on various industry surveys of trends.

- Around 2,500 firms who employ PTSs and 5,000 individuals with PTS qualifications are assumed to be active.<sup>29</sup>

### Unsuitable advice

16. The average level of Financial Ombudsman Service redress is in the range of £40,000–60,000.<sup>30</sup> We consider this to be a proxy for the average harm caused by unsuitable advice in this area.
17. Our supervisory work<sup>31</sup> found that 17% of advice to transfer was unsuitable. The work also found that, for a further 36% of cases, firms failed to demonstrate whether the advice to transfer was suitable. It is likely that a material proportion of this advice would have also been unsuitable. Therefore, we have assumed that 30% of transfer advice is currently unsuitable. We have no evidence of unsuitable advice not to transfer.

### Costs and benefits of proposals

18. Overall, we expect that our proposals set out in this CP will improve the quality of advice. This will help consumers make an informed decision about whether to transfer, based on their personal circumstances, and give them confidence in the advice that is being provided. However, as with most changes to regulatory requirements, there are likely to be costs for firms in making the necessary changes.
19. Based on the assumptions set out above, the potential consumer harm arising from unsuitable advice is in the range of £400m–£720m per annum. A modest proportion of these cases will result in a successful claim for redress, which will offset the consumer loss to some extent. But that cost will be transferred to firms who must provide the compensation. This may be covered by a PI insurer or the FSCS but will also have an impact on future PI premiums and FSCS levies across industry. Overall, therefore, the harm across consumers and advisers remains the same as the £400–£720m estimate.
20. We consider the costs and benefits for each proposal in the following sections.

### Qualifications

21. We are proposing that all PTSs must obtain the same qualifications as investment advisers. A number of advisers will already have this qualification and others will have elements of it. We expect that few existing advisers will need to obtain the additional qualifications in full.
22. On the assumption of 5,000 active individual PTSs and average examination costs of £750 per individual<sup>32</sup> to gain the necessary qualifications, we estimate that there will be an additional cost of £1.9m based on half of PTSs needing to take further exams. We consider that this is a proportionate cost for firms in the context of the better quality advice that clients will receive on the transfer as a whole. We also note that the net impact on the PTSs who need to gain the qualification should also include the overall benefits to their business from upskilling and the extra qualifications.
23. New entrants to the market will also have additional qualification requirements. It is difficult to estimate these volumes, but assuming 250 new advisers a year who would not normally have studied for this qualification; this might lead to an additional cost across the market of £200,000.

29 From data held on the Financial Services Register.

30 [www.fca.org.uk/publication/guidance-consultation/gc17-01.pdf](http://www.fca.org.uk/publication/guidance-consultation/gc17-01.pdf)

31 [www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers](http://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers)

32 Based on typical charges levied by qualification providers for relevant modules.



24. There will also be a cost on firms arising from staff needing to dedicate time to study for the exams. Based on the typical time needed to study the relevant courses suggested by providers, we estimate that the additional qualifications will require 100 hours of additional studying.<sup>33</sup> To some extent this will take up some of the time that is currently being spent on keeping up to date with current developments.
25. Assuming an average hourly cost per adviser of £40<sup>34</sup>, we estimate a one-off cost of £10m to cover the 2,500 advisers who require the additional qualifications. This will be a cost spread across firms and individuals, as some study will be carried out in advisers' own time.
26. On an annual basis, new advisers will incur costs of £0.75m p.a. assuming a lower hourly cost of £30 to reflect the fact that advisers will generally be new recruits.
27. The cost of additional qualifications is identified as £12.1m in the first year, reducing to £0.95m per annum on an ongoing basis thereafter. If this charge is passed on to consumers, this equates to a very small amount per transaction when spread over the (estimated) volume of transactions over a number of years.

### **Triage service**

28. We are not mandating a triage service, but are proposing Handbook guidance for firms who wish to adopt such a service. Firms with an existing service may wish to review it against the guidance. Other firms without a service in place may wish to review the guidance to decide whether to introduce a triage service.
29. Firms are not required to set up their own triage service. Alternatively, firms could also make a referral to the Pensions Advisory Service (TPAS). There are also commercial providers who offer triage software.
30. Our understanding is that around half of firms currently operate a form of triage service. Firms with existing triage services will need to review our guidance to decide whether the service is still appropriate, whether it needs amending, or whether to stop using it. We consider that this review (entailing a compliance assessment) will have an up-front cost of approximately £1,000. Therefore, our proposals will lead to an up-front cost of £1.25m. On a per-transaction basis spread over a number of years, this would be expected to have a marginal impact on the cost of advice to consumers.
31. As we are not mandating a service no additional costs have therefore been assumed for firms who choose to set up a service.
32. We consider that some consumers will benefit from a triage service, particularly where they would otherwise use an adviser who charges for advice not to transfer. Those consumers who use the triage service and identify themselves as less likely to be candidates for a transfer may not proceed to advice and may therefore save costs.

### **Attitude to risk clarification**

33. We are proposing to clarify our Handbook guidance to set out more clearly our expectations that advisers should explore each client's attitude to the risks associated with a transfer, in addition to their attitude to investment risks.

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33 Based on figures from CII course brochure

34 Based on salary data available from recruitment companies



34. We would expect firms to review their own processes, as a matter of course, to see whether any software and processes they use are consistent with the proposed guidance. It is also up to firms to consider whether software used is fit for purpose. There may, however, be some additional one-off costs to some firms in reviewing their software. We estimate an up-front cost of £2,000 per firm impacting half of firms, leading to an additional up-front cost of £2.5m across all firms.
35. The additional costs could be passed on to consumers, although the cost is expected to be marginal taking into account the expected volumes of transactions. Consumers will benefit from a more appropriate assessment of their attitude to the risk of transferring from a safeguarded to a flexible benefit in retirement.

### **Other proposed changes**

#### ***Two-adviser models***

36. We are proposing Handbook guidance to clarify our expectations where one firm advises on the transfer and another firm advises on the proposed investments. The proposed guidance sets out our expectations of firms working together. As part of normal business practice, we would expect 'working together' practices and contracts to be reviewed from time to time; as such, any costs arising from our proposed Handbook guidance are considered marginal.
37. Consumers will benefit from firms working more effectively together and sharing relevant information on consumer circumstances, so that advice provided by both advisers will be better tailored to their personal circumstances and objectives.

#### ***Suitability reports***

38. We are proposing that suitability reports should be produced for all transfer advice, not just a positive recommendation. Some advisers will already be producing reports for both positive and negative transfer recommendations. The report will bring together information from the customers, as well as from the APTA and TVC, and provide reasoning to support the personal recommendation. As most of the information should already be available from the work required to produce the APTA and TVC, the additional costs should mostly be limited to communicating the reasoning and conclusions, together with the cost of producing a report itself. Some of this can be undertaken by administrative staff, but will also require adviser input and oversight.
39. As set out in the assumptions section above, it is assumed that 2 in 3 advice transactions currently result in a recommendation not to transfer and that, currently, half of these already result in suitability reports. We assume costs per report of £150–£200 for firms who do not currently produce them, and a lower cost (£50) for firms who currently do produce them, but who may enhance their reports. These changes therefore result in an additional expected cost of £6.6–£10m per annum. There will also be a modest up-front cost associated with updating processes, which we estimate at £1,000 per firm affected, giving an up-front cost of £1.25m.
40. We expect that costs can be partially passed on to clients. However, clients who do not transfer will benefit from having a durable record of the advice given and the rationale for advising them to remain in their DB scheme. It will also set out a summary of their financial circumstances in retirement and will assist their understanding of why they have been advised not to transfer.



41. The changes could also help to protect firms from any potential future claim made by an insistent client. The firm will have in place a document, shared with the client, which sets out the reasoning behind their advice.

**Other proposals**

42. We do not consider that our other proposals regarding advisers working together, self-investors, pension transfer definition and pension increase assumptions will impose any material costs on consumers. Any additional costs that are incurred by firms and passed on to consumers will be immaterial when allocated over the large volume of advice transactions.

**Costs to the FCA**

43. We do not envisage any impact on costs to the FCA. This area of the market will continue to be an area of focus for our supervisory work.

44. Summary of impact of proposals:

	One-off	Ongoing
Costs to firms	£16.9m	£7.55m–10.95m per annum
Benefits to firms		£400m–720m per annum

**Q14: Do you have any comments on our cost benefit analysis?**

## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of our reasons for concluding that the proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, we are required by section 138I(2)(d) FSMA to include an explanation of why we believe making the proposed rules is (a) compatible with the FCA's general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives; and (b) our general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. We are also required by s. 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government, to which we should have regard in connection with our general duties.
5. Under the Legislative and Regulatory Reform Act 2006 (LRRRA), we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions, such as making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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6. Our proposals are intended to: make sure the market for pension and retirement products and services functions well; and advance our operational objective of securing an appropriate degree of protection for consumers and promote effective competition in the interests of consumers.



7. The proposals set out in this consultation are primarily intended to advance our operational objective of protecting consumers.
8. In considering what degree of protection for consumers is appropriate, we have had regard to the risks involved in pension transfers and the differing degrees of experience those undertaking these transactions may have. We have recognised the general principle that consumers should take responsibility for their own decisions, but consider that there is a need for timely information and advice that is fit for purpose, and that this should be provided with a level of care appropriate for the particular risks involved in these transactions.
9. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well because they aim to ensure that consumers can access advice that results in suitable recommendations, enabling them to make informed decisions. For the purposes of our strategic objective, 'relevant markets' are defined in s. 1F FSMA.
10. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s. 3B FSMA, as set out in the following sections.

**The need to use our resources in the most efficient and economic way**

11. We have considered this principle and do not believe that our proposals will have a significant impact on our resources or the way we use them.

**The principle that a burden or restriction should be proportionate to the benefits**

12. Where required, in Annex 2 we have set out our analysis of the costs and benefits for relevant proposals. Overall, we believe that our proposals are a proportionate response to our concerns.

**The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

13. We have considered this principle and do not believe our proposals undermine it.

**The general principle that consumers should take responsibility for their decisions**

14. The pension freedoms mean that consumers have more choice when accessing their pension savings. With this increase in choice, consumers need to make more decisions; ultimately, though, it is for them to decide what is best for them in their circumstances. Our proposals require advisers to give consumers information and advice to enable them to understand the implications of a decision to transfer out of safeguarded benefits. This information and advice should enable them to make an informed decision, based on their personal situation.

**The responsibilities of senior management**

15. We have had regard to this principle and do not believe our proposals undermine it.

**The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

16. We have had regard to this principle and do not believe our proposals undermine it.

**The desirability of publishing information relating to persons subject to requirements imposed under the FSMA, or requiring them to publish information**

17. We have had regard to this principle and do not believe our proposals undermine it.

### **The principle that we should exercise of our functions as transparently as possible**

18. We have had regard to this principle and do not believe our proposals undermine it.
19. In formulating these proposals, we have had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA).

### **Expected effect on mutual societies**

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20. We do not expect the proposals in this paper to have a significantly different impact on mutual societies than other authorised persons, or present them with any more or less of a burden than other authorised persons.

### **Compatibility with the duty to promote effective competition in the interests of consumers**

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21. In preparing the proposals as set out in this consultation, we have had regard to our duty to promote effective competition in the interests of consumers.
22. The proposals in this paper are intended to ensure that consumers receive suitable advice when they are considering a transfer out of safeguarded benefits. This will give consumers the confidence to understand their retirement options, to ensure they get the right products and services for their needs, and to make a decision on transferring while understanding the implications of that decision. This will drive competition in both the advisory and retirement product markets.

### **Equality and diversity**

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23. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

### **Legislative and Regulatory Reform Act 2006 (LRR)**

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24. We have considered the principles in the LRR and the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance. We believe the proposals will be effective in helping firms understand and meet regulatory requirements more easily, in a manner that leads to improved outcomes for consumers and addresses the issues identified in the market for transferring safeguarded benefits following the introduction of the pension freedoms. We also



believe the proposals are proportionate and will result in an appropriate level of consumer protection when balanced with impacts on firms and competition.

- 25.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance, but this duty does not apply to regulatory functions exercisable through our rules.

### **Treasury recommendations about economic policy**

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- 26.** We have had regard to the Treasury's recommendations under s. 1JA FSMA. Our proposals are consistent with these recommendations, as they aim to improve outcomes for consumers with safeguarded benefits while supporting competition between firms operating in this market.

## Annex 4

### Abbreviations used in this document

<b>AES</b>	Appropriate exam standards
<b>APTA</b>	Appropriate Pension Transfer Analysis
<b>CBA</b>	Cost benefit analysis
<b>CETV</b>	Cash equivalent transfer value
<b>COBS</b>	Conduct of Business Sourcebook
<b>CP</b>	Consultation Paper
<b>CPI</b>	Consumer Prices Index
<b>DB</b>	Defined benefit
<b>DC</b>	Defined contribution
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006
<b>OPS</b>	Occupational pension scheme
<b>PERG</b>	Perimeter Guidance
<b>PI</b>	Professional indemnity
<b>PSD</b>	Product sales data
<b>PTS</b>	Pension transfer specialist
<b>RDR</b>	Retail Distribution Review
<b>RPI</b>	Retail Price Index
<b>TPAS</b>	The Pensions Advisory Service
<b>TVC</b>	Transfer Value Comparator



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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# Appendix 1

## ApEx21 Pension Transfers

<b>ApEx21 Pension Transfers</b>		
<b>Attainment Level</b>	<b>Outcome</b>	<b>Indicative Content</b>
K Demonstrate a knowledge of:	K1. Regulatory definition of a pension transfer, <u>pension conversion</u> and <u>pension opt-outs</u>	K1.1 Financial Conduct Authority's (FCA's) definition
	K2. Legislative and regulatory requirements in relation to conversions and transfers of pension benefits	K2.1 Section 48 of Pension Schemes Act 2015 K2.2 The Pensions Scheme Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 K2.3 The Statutory right to a transfer K2.4 Treating Customers Fairly requirements (reference to ApEx1) K2.5 The regulatory framework governing how transfer values are set
U Demonstrate an understanding of:	U1. Financial Conduct Authority and The Pensions Regulator Rules	U1.1 FCA rules, <u>guidance and alerts</u> specific to pension transfers, <u>pension conversions</u> and <u>pension opt-outs</u> <del>1.1.2</del> 1.1.1 Record keeping and <u>data protection requirements</u> <del>1.1.3</del> 1.1.2 Reporting <del>1.1.4</del> 1.1.3 Insistent customers 1.1.4 Advice and guidance 1.1.5 <del>Suitability</del> <u>Personal recommendation and suitability</u> 1.1.6 <del>TVAS</del> <u>Appropriate Pension Transfer Analysis (APTA), including Transfer Value Comparator (TVC)</u> 1.1.7 The statutory advice requirement, including confirmation of advice 1.1.8 Accepting business and engaging new clients 1.1.9 Triage services and the advice boundary U1.2 The Pensions Regulator rules 1.2.1 How scheme is run 1.2.2 Responsibility of trustees 1.2.3 Guidance for <del>cash</del> incentives <u>exercises</u> 1.2.4 Annual fund statement including voluntary codes 1.2.5 Due diligence & <u>identifying scams</u> , including where business generated via <u>introducers</u>
	U2. Main parties involved in a pension transfer	U2.1 Roles and responsibilities of those involved in the pension transfer process including <u>Pension-Wise impartial guidance services</u> <del>U2.2 Motivation for transfer, including pension unlocking, and reasons for advice given and the ABI estimated time standard</del> U2.2 The role and powers of the <u>Pension Ombudsman Service and the Financial Ombudsman Service over disputes on pension transfers</u> U2.3 Responsibilities in relation to

		<p><u>outsourced pension transfer advice or outsourced pension transfer advice checking</u></p> <p><u>U2.4 Due diligence, contractual arrangements and processes when working with other advice firms</u></p> <p><u>U2.5 Due diligence when dealing with introducers</u></p> <p><u>U2.6 Working with schemes to obtain necessary data for undertaking transfers</u></p> <p><u>U2.7 Client motivation for transfer, including need for cash, and other reasons why advice is being sought</u></p> <p><u>U2.8 Managing client expectations on time constraints</u></p> <p><u>U2.9 Using third party software</u></p> <p><u>U2.10 Discretionary fund managers</u></p>
	<p>U3. The role of the pension transfer specialist</p>	<p><del>U3.1 Key stages of the pension transfer process</del></p> <p><del>U3.1.1 Client objectives and restraints, regulatory restrictions</del></p> <p><del>U3.1.2 Retirement strategy to meet client objectives</del></p> <p><del>U3.1.3 Implementation of retirement strategy</del></p> <p><del>U3.1.4 Responsibility for post-transfer review and control</del></p> <p><u>U3.1 Advice and wider business models, including data protection</u></p> <p><u>U3.1.1 Pension transfer specialist acting as sole adviser</u></p> <p><u>U3.1.2 Pension transfer specialist acting as outsourced adviser, with client passed back to introducer</u></p> <p><u>U3.1.3 Pension transfer specialist acting for self-investor</u></p> <p><u>U3.1.4 Pension transfer specialist checking reasonableness of advice</u></p> <p><u>U3.2 Operating a triage service</u></p> <p><u>U3.2.1 Key stages of the pension transfer process</u></p> <p><u>U3.2.2 Disclosing charges, potential charges and possible conflicts of interest</u></p> <p><u>U3.2.3 Providing generic, balanced information on the advantages and disadvantages of giving up safeguarded benefits</u></p> <p><u>U3.2.4 Avoiding giving advice based on the client's circumstances and objectives</u></p> <p><u>U3.2.5 Availability of alternatives to giving up safeguarded benefits</u></p> <p><u>U3.2.6 Responsibility for implementation of retirement arrangement</u></p> <p><u>U3.2.7 Responsibility for post-transfer review and control, and on-going advice in retirement</u></p>

	<p>U4. Establishing and meeting client objectives</p>	<p><del>U4.1 Current relevant <u>pension retirement</u> arrangements, including <u>state pension and benefits</u></del>  <del>U4.2 Other relevant assets and financial and personal information</del>  <del>U4.3 Client <u>pension retirement</u> objectives and expectations of outcome, including income requirements and need for tax free cash</del>  <del>U4.4 <u>Attitude to risk</u></del>  <del>U4.4 <u>Identification and management of unrealistic client objectives</u></del>  <del>U4.5 <u>Capacity for loss</u></del>  <del>U4.5 <u>Capability to accept risk associated with transferring safeguarded benefits</u></del>  <del>U4.5 <u>How and when benefits will be taken</u></del>  <del>U4.6 <u>Attitude to investment risk, including capacity for investment loss</u></del>  <del>U4.6 <u>Client liquidity requirements</u></del>  <del>U4.7 <u>How and when benefits will be taken, including assessment of client's ability to manage funds over the long term</u></del>  <del>U4.8 <u>Retail clients and professional clients</u></del>  <del>U4.9 <u>Assessment of client's financial capability and knowledge including ability to manage funds over the long term</u></del>  <del>U4.10 <u>Client liquidity requirements</u></del>  <del>U4.11 <u>Dealing with a client who is a self-investor</u></del></p>
	<p>U5. Rights and options of leavers</p>	<p><del>U5.1 <u>Transfer value</u></del>  <del>U5.2 <u>Ill health, serious ill-health, disability and other forms of benefits and implications for taxation</u></del>  <del>U5.3 <u>Early retirement benefits and impact on APTA</u></del>  <del>U5.4 <u>Deferred benefits and impact on APTA</u></del>  <del>U5.5 <u>Cash commutation of benefits at retirement</u></del>  <del>U5.6 <u>Partial transfers</u></del></p>
	<p>U6. <u>Critical yield APTA and TVC</u></p>	<p><del>U6.1 <u>Basic principles of TVAS</u></del>  <del>U6.2 <u>Asset allocation and how critical yield might be achieved</u></del>  <del>U6.3 <u>What benefits affect the critical yield</u></del></p> <p><u>U6.1 <u>Role and impact of TVC</u></u>  <u>U6.2 <u>Purpose of APTA in demonstrating suitability</u></u>  <u>U6.3 <u>The continuing use of critical yield including its limitations, in APTA</u></u>  <u>U6.4 <u>The use of cash flow modelling in APTAs</u></u>  <u>U6.5 <u>Specific information on receiving scheme and onward destination in APTA, including asset allocation, charge, taxation effects and flexibilities</u></u>  <u>U6.6 <u>Stochastic and deterministic modelling for APTAs, and reconciling different approaches</u></u></p>

		<p><u>U6.7 Quantitative and qualitative analysis in the APTA</u></p> <p><u>U6.8 Reconciling client objectives and needs with trade-offs between retirement options, TVC and other factors</u></p> <p><u>U6.9 Communicating APTA and TVC to clients</u></p>
	<p>U7. Apply rules regarding pension transfers and <del>divorce</del> <u>relationships</u></p>	<p><u>U7.1 Shadow benefits in the event of divorce and ending of civil partnerships</u></p> <p><u>U7.2 Implications of pension sharing and impact on the transfer</u></p> <p><u>U7.3 Issues surrounding pension sharing versus attachment orders</u></p> <p><u>U7.4 The <del>relevance</del> <u>differences</u> between legal systems in the UK in terms of <u>marriage, civil partnerships and divorce</u></u></p>
	<p>U8. Schemes with solvency issues</p>	<p><u>U8.1 The role and impact of the Pension Protection Fund (PPF), in meeting client objectives and needs</u></p> <p><u>U8.2 The role and impact of the Pensions Ombudsman Service <del>over disputes on pension transfers</del> <u>Regulator in overseeing scheme funding issues</u></u></p> <p><u>U8.3 The impact of <u>scheme solvency</u> <del>of</del> <u>on the transfer value and whether reductions apply</u></u></p> <p><del>U8.3</del> <u>U8.4 Order of priorities for drawing benefits from a scheme with solvency issues</u></p> <p><u>U8.5 The risks of <u>analysing scheme solvency, funding levels and employer covenant</u></u></p> <p><u>U8.6 Comparing PPF benefit levels with DC benefits and risks</u></p> <p><u>U8.7 Options for sponsors in financial difficulties including <u>Regulated Apportionment Arrangements</u></u></p>
	<p>U9. Transfers abroad (to and from overseas schemes)</p>	<p><u>U9.1 Qualifying rules</u></p> <p><u>U9.2 Tax implications/HMRC rules in outline</u></p> <p><u>U9.3 <u>Legislative and</u> FCA requirements for overseas customers and the parties involved including regulated individuals in the UK and overseas</u></p> <p><u>U9.4 Benefits and risks of overseas transfers including <u>carrying out due diligence of overseas partners</u></u></p> <p><u>U9.5 Obtaining necessary information from overseas advisers</u></p> <p><u>U9.6 Adjusting the APTA for overseas transfers</u></p> <p><u>U9.7 Comparison of consumer protections that apply in UK and overseas</u></p>
	<p>U10. Fundamentals of workings of block transfers and winding up</p>	<p><u>U10.1 Protection of tax free cash and <u>protected retirement ages</u></u></p> <p><u>U10.2 Reporting requirements</u></p> <p><u>U10.3 Notification periods</u></p> <p><del>U10.4 Potential conflicts of interest in advising individuals and trustees</del></p>
<p>An Demonstrate an ability to analyse:</p>	<p>An1. Implications of the source of a</p>	<p><del>An1.1 Defined contribution schemes</del></p> <p><del>An1.2 Defined benefit schemes</del></p>

	transfer	<p>An1.3 Public sector schemes</p> <p>An1.4 Insolvency risk</p>
	An2. The implications of moving between different scheme types	<p>An2.1 Workplace pensions</p> <p>An2.2 Benefit crystallisation option</p> <p>An2.2.1 Phased income/retirement</p> <p>An2.2.2 Flexi access drawdown</p> <p>An2.2.3 Annuities — including guaranteed rates, recycling rules and transfers for immediate vesting</p> <p>An2.3 Alternative retirement vehicles</p> <p>An2.4 Final salary schemes</p> <p>An2.5 Career average schemes</p> <p>An2.6 Public sector transfer club</p> <p>An2.7 Trusts — impact on trust if transfer carried out</p> <p>An2.8 Death in service</p> <p>An2.9 Impact of dependents' benefits on a personal Pension scheme</p>
	An1. Different types of pension arrangements	<p>An1.1 Defined contribution schemes</p> <p>An1.2 Defined benefit schemes</p> <p>An1.3 Other safeguarded benefit schemes</p> <p>An1.4 Career average schemes</p> <p>An1.5 Hybrid schemes</p> <p>An1.6 Public sector schemes including transfer options</p> <p>An1.7 Small self-administered schemes</p> <p>An1.8 Stakeholder pensions, personal pensions and self invested personal pensions</p> <p>An1.9 Workplace pensions and automatic enrolment</p> <p>An1.10 Benefit crystallisation options</p> <p>An1.10.1 Phased income/retirement</p> <p>An1.10.2 Flexi access drawdown and Uncrystallised Funds Pension Lump Sum</p> <p>An1.10.3 Annuities – including guaranteed rates, impaired life, temporary annuities, variable annuities, recycling rules and transfers for immediate vesting, hybrid annuity/drawdown options, later life annuities</p> <p>An1.11 Insolvency risk in defined benefit and defined contribution arrangements</p> <p>An 1.12 Death in service only schemes</p>
	An3.An2. Implications of cash incentives to leave a defined benefit scheme, including enhanced transfer value exercises	<p>An3.1An2.1 Implications of cash incentives to leave a defined benefit scheme</p> <p>An3.2An2.2 Impact on TVAS reporting APTA and TVC and way in which pension transfer is reported</p> <p>An3.3An2.3 Motivation of employers to offer such incentives</p> <p>An2.4 Risks of streamlining advice when providing personal recommendations</p> <p>An2.5 Potential conflicts of interest in advising individuals, trustees and employers</p> <p>An2.6 Code of Practice on incentivised</p>

		<u>exercises</u>
	<u>An4-An3. Transitional protection arrangements</u>	<u>An4.1 Primary protection</u> <u>An3.1 Transitional protection arrangements (primary &amp; enhanced) protection</u> <u>An4.2 Enhanced protection</u> <u>An4.3An3.2 Protected transfers</u> <u>An4.4 Tax An3.3 Protected tax free cash and retirement ages</u> <u>An3.4 Historical changes in tax limits</u>
	<u>An5.An4. APTA: Income options and death benefits and their impact on the transfer recommendation</u>	<u>An5.1An4.1 Difference between retirement options relative to client's capacity to accept transfer risk and attitude to investment risk</u> <u>An5.2 Maximum benefits — tax free cash etc</u> <u>An4.2 Consideration of structure of benefits and alternative means to meet clients' objectives and needs</u> <u>An5.3 Risk and return</u> <u>An4.3 Illustrating income options and risks, relative to income retirement needs for a sufficient period of time, allowing for charges and tax</u> <u>An5.4 Analysis of critical yields in drawdown cases</u> <u>An4.4 Comparing death benefit structures on a consistent basis, at different points in time</u> <u>An5.5An4.5 Mortality drag, life expectancy risk and the risk of running out of money - if live beyond average life expectancy</u> <u>An5.6 An4.6 Certainty vs Flexibility</u> <u>An5.7 Comparison of features on income drawdown</u> <u>An4.7 Effect of taxation for differing retirement options – income tax, inheritance tax, lifetime allowance, annual allowance, scheme pays option, tapered annual allowance, money purchase annual allowance, overseas transfer tax charges</u> <u>An5.8 Effect of transfer on income drawdown</u> <u>An4.8 The pension advice allowance</u> <u>An5.9 Added years' purchase</u> <u>An4.9 Ill health considerations, including tax</u> <u>An5.10 Life expectancy risk</u> <u>An4.10 PPF outcomes</u> <u>An4.11 Trade-offs between options and benefits, TVC and client objectives and needs</u>
	<u>An6. An5. How income options and death benefits are related to a combination of investment risk, capital economic risk and mortality risk</u>	<u>An6.1 An5.1 Inflation and investment returns – nominal and real</u> <u>An6.2 An5.2 The effects of inflation</u> <u>An6.3 An5.3 The time value of money</u> <u>An6.4 An5.4 The impact of varied retirement returns, including sequencing risk</u> <u>An6.5 An5.5 Risks associated with each retirement option</u> <u>An6.6 An5.6 The appropriateness of indexation</u>

		<p><del>An6.7</del> <del>An5.7</del> <u>The probabilities in relation to dependents' benefits</u></p> <p><del>An6.8</del> <del>An5.8</del> <u>Capital protection on death</u></p> <p><del>An6.9</del> <del>An5.9</del> <u>Guarantee periods</u></p> <p><del>An5.10</del> <u>Benefits already taken</u></p>
	<p><del>An7.</del> <u>An6.</u> Advantages and disadvantages of a transfer</p>	<p><del>An7.1</del> <u>An6.1</u> Analyse the advantages and disadvantages of a transfer in a range of given circumstances, <u>using an APTA, including a TVC, to support the analysis</u></p>
	<p><del>An8.</del> <u>An7.</u> Financial circumstances and retirement options</p>	<p><del>An8.1</del> <u>An7.1</u> Analyse and interpret a range of financial circumstances and retirement options in order to prepare <u>personal recommendations to meet client objectives which meet suitability requirements</u></p> <p><u>An7.2</u> Consider how the <u>personal recommendation fits with the FCA view that giving up safeguarded benefits will not be suitable</u></p>
<p>A Demonstrate an ability to apply:</p>	<p>A1. Apply suitable pension transfer solutions to specific client circumstances</p>	<p>A1.1 Apply suitable pension transfer solutions in a range of given circumstances, demonstrating the principles of best practice and reinforcing the Know Your Customer process</p>





## Appendix 2

### Draft Handbook text

**CONDUCT OF BUSINESS SOURCEBOOK (PENSION TRANSFERS) (No 2)  
INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 137A (The FCA’s general rules);
  - (b) section 137T (General supplementary powers);
  - (c) section 138C (Evidential provisions); and
  - (d) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. Annex A and Part 1 of Annex C come into force on 1 October 2018.
- D. Annex B comes into force on 1 October 2020.
- E. Part 2 of Annex C and Annex D come into force on 1 January 2019.
- F. Part 3 of Annex C comes into force on 6 April 2019.

**Amendments to the Handbook**

- G. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Training and Competence sourcebook (TC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Perimeter Guidance manual (PERG)	Annex D

**Citation**

- H. This instrument may be cited as the Conduct of Business Sourcebook (Pension Transfers) (No 2) Instrument 2018.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following as shown.

<i>pension transfer</i>	<p>a transaction, resulting from the decision of a <i>retail client</i> who is an individual:</p> <p>(a) <del>to transfer deferred benefits (regardless of when the <i>retail client</i> intends to crystallise such benefits) from:</del></p> <p style="padding-left: 20px;">(i) <del>an <i>occupational pension scheme</i>;</del></p> <p style="padding-left: 20px;">(ii) <del>an individual pension contract providing fixed or guaranteed benefits that replaced similar benefits under a <i>defined benefits pension scheme</i>; or</del></p> <p style="padding-left: 20px;">(iii) <del>(in the cancellation rules (<i>COBS 15</i>)) a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i>;</del></p> <p style="padding-left: 20px;"><del>to:</del></p> <p style="padding-left: 20px;">(iv) <del>a <i>stakeholder pension scheme</i>;</del></p> <p style="padding-left: 20px;">(v) <del>a <i>personal pension scheme</i>; or</del></p> <p style="padding-left: 20px;">(vi) <del>a deferred annuity <i>policy</i>, where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment; or</del></p> <p style="padding-left: 20px;">(vii) <del>a <i>defined contribution occupational pension scheme</i>; or</del></p> <p>(b) <del>to require the trustees or manager of a pension scheme to make a transfer payment in respect of any <i>safeguarded benefits</i> with a view to obtaining a right or entitlement to <i>flexible benefits</i> under another pension scheme.</del></p> <p>(1) <u>(except in <i>COBS 15 (Cancellation)</i>) a transaction, resulting from the decision of a <i>retail client</i> who is an individual to require a transfer payment in respect of any <i>safeguarded benefits</i>:</u></p> <p style="padding-left: 20px;">(a) <u>from any pension scheme with a view to obtaining a right or entitlement to <i>flexible benefits</i> under another pension scheme;</u> <u>or</u></p> <p style="padding-left: 20px;">(b) <u>from an <i>occupational pension scheme</i> with a view to obtaining a right or entitlement to <i>safeguarded benefits</i> under</u></p>
-------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- a non-occupational pension scheme; or
- (c) from a deferred annuity contract that replaced similar benefits under a *defined benefits scheme* with a view to obtaining a right or entitlement to *safeguarded benefits* under a non-occupational pension scheme or a *defined contribution occupational pension scheme*.
- (2) (in COBS 15 (Cancellation)) a transaction, resulting from the decision of a *retail client* who is an individual to:
- (a) require a transfer payment in respect of any *safeguarded benefits*:
- (i) from an *occupational pension scheme* to a non-occupational pension scheme; or
- (ii) from a deferred annuity contract that replaced similar benefits under a *defined benefits scheme* to a non-occupational pension scheme or a *defined contribution occupational pension scheme*; or
- (b) require a transfer payment from a *stakeholder pension scheme* or *personal pension scheme* to a non-occupational pension scheme or a *defined contribution occupational pension scheme*; or
- (c) require a transfer payment in respect of *flexible benefits* from an *occupational pension scheme* to a non-occupational pension scheme.

For the purposes of this definition of “pension transfer”, “non-occupational pension scheme” means a *stakeholder pension scheme*, a *personal pension scheme* or a deferred annuity contract.

## Annex B

### Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Competence

### 2.1 Assessing and maintaining competence

...

#### Supervisors

2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well (~~except where the employee is giving personal recommendations on retail investment products or advising on P2P agreements, see TC 2.1.5R applies~~).

2.1.5 R Where an *employee* has not been assessed as competent to do so and:

(1) ...

(2) gives *advice on P2P agreements to retail clients*, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*; or

(3) undertakes the activity of a pension transfer specialist, the firm must ensure that the individual supervising and assessing that employee has attained an appropriate qualification for undertaking the activity of a pension transfer specialist and an appropriate qualification for giving personal recommendations on retail investment products to retail clients.

...

2.1.5I ...

#### Knowledge and competence requirements for a pension transfer specialist

2.1.5J R TC 2.1.5KR applies to a firm advising on pension transfers, pension conversions and pension opt-outs.

2.1.5K R A firm must not, for the purposes of TC 2.1.1R, assess an employee as competent to carry on activity 11 in TC Appendix 1 until the employee has

attained each module of an appropriate qualification for giving personal recommendations on retail investment products to retail clients (i.e. in addition to an appropriate qualification for activity 11).

- 2.1.5L    G    The effect of TC 2.1.5KR is that an employee undertaking the activity of a pension transfer specialist must be qualified to the same standard as if that employee were providing investment advice to retail clients on retail investment products (in addition to attaining an appropriate qualification for activity 11).
- 2.1.5M    G    An employee who only carries on activity 11 of the activities included in TC Appendix 1 is not a retail investment adviser. As such, the rules in this section applicable to retail investment advisers are not relevant to employees who only advise on pension transfers and opt-outs.

#### Qualification requirements before starting activities

...

- 2.1.7    R    A firm must ensure that an employee does not carry on any of the following activities without first attaining each module of an appropriate qualification:
- (1A) giving personal recommendations on and dealing in securities which are not stakeholder pension schemes, personal pension schemes or broker funds; or
  - (1B) giving personal recommendations on and dealing in derivatives; or
  - (2) the activity of a broker fund adviser; or
  - (3) advising on syndicate participation at Lloyd's; or
  - (4) the activity of a pension transfer specialist. [deleted]

- 2.1.7A    R    A firm must ensure that an employee does not undertake the activity of a pension transfer specialist without first attaining each module of an appropriate qualification for undertaking the activity of a pension transfer specialist and each module of an appropriate qualification for giving personal recommendations on retail investment products to retail clients.

...

#### Selecting an appropriate qualification

- 2.1.10    E    (1)    This rule applies for the purposes of TC 2.1.1R, TC 2.1.5R, TC 2.1.5HR, TC 2.1.5KR, TC 2.1.6R, TC 2.1.7R, TC 2.1.7AR, TC 2.1.9R, TC 2.2A.1R, TC 2.2A.3R and TC 2.2A.6R.

...

...

**App 4.1 Appropriate Qualification tables**

App ...  
4.1.1E

Part 1B: The non-Retail Distribution Review activities (non-RDR activities)

Activity Number	Non-RDR Activity (non-overseeing activity)
...	
11	Undertaking the activity of a <i>pension transfer specialist</i> (see also <i>TC 2.1.5KR</i> )
...	

...



## Annex C

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1: Comes into force 1 October 2018

#### 9 Suitability (including basic advice) (non-MiFID provisions)

...

#### 9.4 Suitability reports

Providing a suitability report

9.4.1 R A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

...

(3) elects to make *income withdrawals*, an *uncrystallised funds pension lump sum* payment or purchase a *short-term annuity*; or

(4) enters into a ~~*pension transfer*~~, ~~*pension conversion*~~ or *pension opt-out*.

...

9.4.2A R If a *firm* makes a *personal recommendation* in relation to a *pension transfer* or *pension conversion*, it must provide the *client* with a *suitability report*.

...

#### 19 Pensions supplementary provisions

#### 19.1 Pension transfers, conversions, and opt-outs

...

Guidance on assessing suitability

19.1.6 G ...

(4) To demonstrate (3), the factors a *firm* should take into account include:

...

(b) the *retail client's* attitude to, and understanding of the risk of giving up *safeguarded benefits* (or potential *safeguarded*

*benefits*) for *flexible benefits*; , taking into account the following factors:

- (i) the risks and benefits of staying in the ceding arrangement;
- (ii) the risks and benefits of transferring into an arrangement with *flexible benefits*;
- (iii) the *retail client*'s attitude to certainty of income in retirement;
- (iv) whether the *retail client* would be likely to access funds in an arrangement with *flexible benefits* in an unplanned way;
- (v) the likely impact of (iv) on the sustainability of the funds over time;
- (vi) the *retail client*'s attitude to and experience of managing investments or paying for *advice on investments* so long as the funds last; and
- (vii) the *retail client*'s attitude to any restrictions on their ability to access funds in the ceding arrangement;

...

- (5) If a *firm* uses a risk profiling tool or software to assess a *retail client*'s attitude to the risk in (4)(b) it should:
  - (a) check whether the tool or software is capable of taking into account at least those factors listed in (4)(b)(i) to (vii); and
  - (b) ensure that those factors which are not included are factored into the *firm*'s assessment of the *client*'s attitude to risk.
- (6) When a *firm* asks questions about a *retail client*'s attitude to the risk in 4(b) it should consider the *rules* on communicating with *clients* (COBS 4) which require a *firm* to ensure that a communication is fair, clear and not misleading.

#### Working with another adviser

- 19.1.6A G (1) This *guidance* relates to the obligations to assess suitability in COBS 9.2.1R to 9.2.3R.
- (2) Paragraphs (3) and (4) apply in the following situations:
- (a) where two or more *firms* are involved in providing both *advice on pension transfers, pension conversions and*

pension opt-outs and advice on investments in relation to the same transaction; and

- (b) where two or more employees within the same firm are involved in providing both advice on pension transfers, pension conversions and pension opt-outs and advice on investments in relation to the same transaction.
- (3) In such situations, firms should work together (or ensure their employees work together) to:
- (a) obtain information from the retail client under COBS 9.2.2R(1) that is sufficient to inform both the advice on pension transfers, pension conversions and pension opt-outs and the advice on investments; and
- (b) obtain information from the retail client under COBS 9.2.2R(2) in relation to their preferences regarding risk taking and their risk profile that covers both the risk in COBS 19.1.6R(4)(b) and the risk in COBS 19.1.6R(4)(c).
- (4) In such situations, the firm(s) providing the advice on investments in relation to the proposed transaction should ensure that (where relevant) the advice takes into account the impact of any loss of safeguarded (or potentially safeguarded) benefits on the retail client's ability to take on investment risk.

...

Record keeping and suitability reports

...

- 19.1.9 G If a firm proposes to advise a retail client not to proceed with a ~~pension transfer, pension conversion or pension opt-out~~, it should give that advice in writing.

The statutory advice requirement

- 19.1.10 G (1) Where a firm has advised a retail client in relation to a pension transfer or pension conversion and the firm is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the firm should provide such confirmation as soon as reasonably practicable.
- (2) The firm should provide the confirmation regardless of whether it advised the client to proceed with a pension transfer or pension conversion or not.

**Part 2: Comes into force 1 January 2019**

**19 Pensions supplementary provisions**

**19.1 Pension transfers, conversions, and opt-outs**

...

Triage services

19.1.11 G The table in *PERG 12 Annex 1G* includes examples of when a *firm* is and is not *advising on conversion or transfer of pension benefits* when it has an initial “*triage*” conversation with a potential customer. The purpose of *triage* is to give the customer sufficient information about *safeguarded benefits* and *flexible benefits* to enable them to make a decision about whether to take *advice on conversion or transfer of pension benefits*.

**Part 3: Comes into force 6 April 2019**

**19 Pensions supplementary provisions**

...

**19 Assumptions**

**Annex  
4C**

This annex belongs to *COBS 19.1.2BR* and *COBS 19.1.3AR*.

Assumptions			
R			
1	(1)	...	
	(2)	The assumptions are:	
		...	
		(b)	the index-linked annuity interest rate for pension benefits linked to the <i>CPI</i> is the annuity rate in (a) plus <del>0.5%</del> <u>1.0%</u> ;
			...
		(d)	the annuity interest rate for post-retirement <i>limited price indexation</i> based on the <i>RPI</i> with maximum pension increases less than or equal to 3.5%, or with minimum pension increases more than or equal to 3.5%,

			is the rate in (c) allowing for increases at the maximum <u>or minimum</u> rate of pension increase <u>respectively</u> ; otherwise it is the rate in (a);
		(e)	the annuity interest rate for post-retirement <i>limited price indexation</i> based on the <i>CPI</i> with maximum pension increases less than or equal to <del>3.0%</del> <u>2.5%</u> , or with minimum pension increases more than or equal to <del>3.5%</del> <u>3.0%</u> , is the rate in (c) above allowing for increases at the maximum <u>or minimum</u> rate of pension increase <u>respectively</u> ; <del>where minimum pension increases are more than or equal to 3% but less than 3.5%</del> the annuity rate is the rate in (c) above allowing for increases at the <u>minimum</u> rate of pension increase; otherwise it is the rate in (b) above;
		...	
	...		
	(4)	The assumptions are:	
		(a)	the <i>RPI</i> is: <span style="float: right;"><del>2.5%</del> <u>3.0%</u></span>
		(b)	the average earnings index and the rate for section 148 orders is: <span style="float: right;"><del>4.0%</del> <u>3.5%</u></span>
		(c)	for benefits linked to the <i>RPI</i> , the pre-retirement <i>limited price indexation</i> revaluation is: <span style="float: right;"><del>2.5%</del> <u>3.0%</u></span>
		...	
...			

## Annex D

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 12 Guidance for persons running or advising on personal pension schemes

...

### 12.6 Advising on conversion or transfer of pension benefits

...

Q35. When does a *firm* advise on conversion or transfer of pension benefits when it provides triage services?

The table in PERG 12 Annex 1G includes examples of when a *firm* is and is not *advising on conversion or transfer of pension benefits* when it has an initial “*triage*” conversation with a potential customer. The purpose of triage is to give the customer sufficient information about *safeguarded benefits* and *flexible benefits* to enable them to make a decision about whether to take *advice on conversion or transfer of pension benefits*.

After PERG 12.6 (Advising on conversion or transfer of pension benefits) insert the following new Annex. The text is not underlined.

#### 12 Annex 1G Examples of what is and is not advising on conversion or transfer of pension benefits

Example	Is this advising on conversion or transfer of pension benefits?
<p><i>Firm A</i> has a triage conversation with customers. It gives them factual information about <i>safeguarded benefits</i> and <i>flexible benefits</i> and describes the requirement to take <i>advice on conversion or transfer of pension benefits</i> and the cost of transfer. In addition the <i>firm</i> explains the features of pension schemes with <i>flexible benefits</i> and pension schemes with <i>safeguarded benefits</i> that make them more or less suitable for general groups of people. The <i>firm</i> also explains the cash equivalent transfer value.</p>	
<p>(1) During the triage conversation the customer’s circumstances are covered. Based on these specific circumstances, the <i>firm</i> tells the customer that they should not take advice.</p>	<p>Yes. This is advice because it is effectively advice to stay in the occupational pension scheme and advice not to transfer.</p>

<p>(2) Same circumstances as example (1) but the <i>firm</i> tells the customer that they would be unlikely to recommend a transfer if the customer took advice.</p>	<p>Yes. This is likely to be an implicit recommendation not to transfer.</p>
<p>(3) After giving the factual information set out at the start of this table and taking into account the customer's specific circumstances, the <i>firm</i> tells the customer it will not provide them with <i>advice on conversion or transfer of pension benefits</i>.</p>	<p>The <i>firm</i> will not give regulated advice in these circumstances if it tells the customer that it will not give advice to the customer. The <i>FCA</i> thinks that <i>firms</i> should be able to turn down business they do not want to carry out without this being interpreted as <i>advising on conversion or transfer of pension benefits</i>. Refusing to do business with someone is not consistent with having an advisory relationship with them. (A similar issue arises under the <i>regulated activity of advising on investments</i> - see example F(12) at <i>PERG 8 Annex 1G</i>.)</p>
<p>(4) After giving the factual information set out at the start of the table, the <i>firm</i> signposts sources of information on them, including an option to take advice.</p> <p>The <i>firm</i> leaves it to the customer to decide whether or not to take advice.</p>	<p>No, the general context of the information provided and the neutral way in which it is presented should not involve advice.</p> <p>A <i>firm</i> may give advice if it provides an opinion on whether the customer should proceed to taking advice or if it uses language which may be perceived as influencing a customer's decision to take advice.</p> <p>A <i>firm</i> does not necessarily give advice by bringing obviously relevant facts to the attention of a customer who wants to transfer, even if those facts show that a transfer would be a poor decision.</p>

