

Guide for Employers and Trustees on providing support with financial matters without needing to be subject to regulation

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Introduction

As an employer or pension trustee, you might wish to help your employees with financial matters. However, you might not be sure about what you can do, without needing to be authorised by the Financial Conduct Authority.

This factsheet gives some information on the things you can do without the need to be authorised. It does not give an exhaustive summary of all the relevant legislation; however, we have signposted other resources that you might find helpful in understanding the sorts of things that you might offer employees.

Authorisation

Where an employer or trustee is thinking about helping their employees with their workplace pension scheme, or other aspects of their financial affairs, they will generally not need to be authorised by the FCA.

An employer or trustee will only need authorisation from the FCA if they are in the business of providing investment advice and if they receive a 'commercial benefit' for helping their employees. A 'commercial benefit' could take a number of forms but the most obvious would be where the provider of a financial product offers the employer commission or a reduction in their commercial insurance premiums. Where a firm's pension and benefits package results in a more motivated or productive workforce we would not regard this as a commercial benefit that would trigger the requirement for the firm to be FCA authorised.

Employers and trustees are not generally in the business of giving investment advice and do not normally receive any commercial benefit for giving advice to, or helping their employees with pensions or other financial matters. So in most cases employers should be able to help their staff without needing to be authorised.

Promoting Pensions

The most likely area where employees are likely to turn to their employers or pension trustees for help is, of course, with their pension.

In general, any material that promotes a particular financial product needs to be issued by someone authorised by the FCA or approved by an authorised firm. This includes promotional material in any format. However, there are certain exemptions which may allow an employer to promote a pension scheme offered in the workplace.

Information on the merits of participating in an occupational pension scheme, which is not a stakeholder pension scheme or a workplace personal pension scheme, is not caught by the restrictions on promoting financial products as the employees are not acquiring investments.

In respect of stakeholder pension schemes or workplace personal pension schemes, where you simply communicate factual information, for example that staff have the option of making a switch from one default fund to another default fund with no additional element of invitation or inducement, this should not qualify as a financial promotion. However, if the factual information is presented in a way which also seeks to promote the pension scheme, encourage a switch, or persuade individuals to join it, then it could constitute a financial promotion and would need to be approved by an authorised firm unless one of the exemptions applies.

There are many types of scheme that you might be offering your staff, for example stakeholder, occupational or group personal pension schemes, and different rules and exemptions may apply to the different types of schemes. Detailed information which might help is publically available:

- The FSA's guide on promoting pensions to your employees: www.fca.org.uk/publication/archive/fsa-promoting-pensions-employees.pdf
- TPR's guide on how to talk about DC pension schemes with your employees: <http://www.thepensionsregulator.gov.uk/docs/guide-talking-to-your-employees-about-pensions.pdf>

In addition to any assistance you may want to provide, automatic enrolment law requires employers to enrol certain employees into a pension scheme and to provide some specific information in writing and to do so within certain time limits. For further details please see www.tpr.gov.uk/resource-info

Promoting other financial workplace benefits

As mentioned above, communications which promote a financial product usually need to be issued by an FCA authorised firm or approved by them. There are a number of exemptions set out in the FCA Handbook and the Financial Promotions Order which may allow an employer, or service providers contracted by employers, to promote the following products to staff in certain circumstances (references to each exemption and their conditions can be found in the footnotes below) –

- employee share schemes;¹
- certain insurance products (e.g. life assurance, critical illness, medical, dental and income protection insurance);²

1 Article 60 of the Financial Promotions Order 2005. FCA Handbook – PERG 8.4.34G and PERG 8.5.5G

2 Articles 72B and 72C of the Financial Promotions Order 2005. FCA Handbook – PERG 8.14.40ABG to PERG 8.14.40ACG

- staff mortgages provided certain conditions are met;³ and,
- staff loans offered to employees (for example travel card loans).⁴

What advice should an employer or trustee not give?

Even though an employer or trustee may not need to be authorised, many employers and trustees are unlikely to be in a position to give detailed advice on questions such as:

- Which of the investment funds on offer under the pension scheme should I choose?
- Would I be better off putting my money into something instead of a pension such as an ISA or the Lifetime ISA?
- Is it a good idea to transfer benefits under my old pension scheme into this scheme?

Such questions would need a detailed understanding of an individual's financial circumstances and their expectations and priorities. Although you only need to be authorised by the FCA if you are in the business of giving investment advice and are benefitting commercially for doing so it is unlikely that you would be in a position to properly advise an employee or trustee on these matters. An employer or trustee should not suggest that they are able to provide such advice. Where employees or members act on this advice, employers or trustees may risk becoming liable for any losses incurred, and may additionally damage their relationship with employees or members. Trustees will also need to bear in mind that they have a fiduciary duty to their membership and therefore will need to carefully consider whether it would be appropriate for them to offer any advice, in their capacity as trustees, to members.

What an employer or trustee might want to do

Rather than answering specific questions, an employer or trustee could instead consider how they can provide more general information and support to help staff make their own financial decisions.

You can signpost publicly available resources for information and guidance about financial matters such as The Pensions Advisory Service, the Money Advice Service (MAS) and Pension Wise, or specific documents they have published on key subjects, such as the MAS guide to making the most of your money:

<https://www.moneyadvice.service.org.uk/en/employer-best-practices/money-guide>

Separate from your automatic enrolment obligations, you may also give employees purely factual information on their workplace personal pension arrangements, provided this information is not presented in a way which also seeks to promote the pension scheme or persuade individuals to join it. This means that, among other things, there is no difficulty in providing the Key Features Document of the workplace pension scheme provider which contains essential information that staff will need to know. You could also provide factual information about an occupational pension scheme (which is not a stakeholder pension scheme or a workplace personal pension scheme), and this would not be caught by the restrictions on promoting financial products.

3 Articles 72D and 72E of the Financial Promotions Order 2005. FCA Handbook – PERG 8.14.40ADG to PERG 8.14.40AEG

4 Article 72F of the Financial Promotions Order 2005. FCA Handbook – PERG 8.14.40AEG to PERG 8.14.40AFG.

Information which does not relate to investments or financial products is also out of scope of FCA regulation, and as such an employer might freely provide support to encourage their staff to ensure that, for example:

- their tax code is correct;
- they are claiming appropriate benefits;
- they have a will in place.

Equally, general help for employees on things like budgeting or comparing utility providers are outside the scope of FCA regulation.

An employer or pension trustee might also suggest that staff seek formal advice from an authorised financial adviser or their pension scheme provider. In general, this may be fine if –

- The employer or trustee simply suggests an employee seeks advice from an FCA authorised firm and nothing more.
- The employer or trustee provides access to an FCA authorised adviser at their expense or as part of a staff benefit.

More information on this is also set out in the FCA's [Perimeter Guidance](#).

If you are looking to arrange advice for your employees as an employer, then you might want to be aware of the government's income tax exemption for [Employer-arranged pensions advice](#).

Examples of practice and considerations

Example 1: occupational pension scheme - provision of information

The trustees of the ABC Pension Scheme Limited, a defined contribution occupational pension scheme with multiple sponsoring employers, prepare a series of documents for members setting out the terms of the scheme and the different investment options the member can choose.

As the scheme is an occupational pension scheme, the communications do not constitute regulated advice and are not subject to the restrictions on promoting financial products.

Pension trustees have a duty of care imposed by trust law to ensure that their actions are in the best interests of the membership. So they need to make sure that the communications are accurate.

Example 2: employer-sponsored at retirement seminars

Employer DEF is aware that many of their employees are over 50 and so potentially starting to consider their retirement options. Employer DEF has both a legacy occupational pension scheme and a newer group personal pension scheme (which they use for automatic enrolment).

DEF decides to commission an employee benefit consultancy (EBC) to give a series of in-work retirement seminars to interested employees. The EBC is an FCA authorised firm and, as such, is responsible for any regulated activity that it undertakes. These seminars cover factual information only, but there is also the possibility to get individual advice from an FCA-regulated adviser, which the firm will subsidise.

As the seminars cover factual information, this would not generally be regulated advice but may be classed as a financial promotion, depending on the content and context (the EBC should be able to advise the employer about this). In the event that it does amount to a financial promotion then it would need to be approved by an FCA authorised person but this would be a matter for the EBC to satisfy. Advice given may or may not be regulated, but – as it is delivered by an FCA-regulated adviser and not the employer – the adviser bears the responsibility for complying with relevant FCA rules.