FCA FINANCIAL CONDUCT AUTHORITY

Finalised Guidance

FG22/1: The FCA's approach to the review of Part VII insurance business transfers

15 February 2022

1 Introduction

1.1 This guidance sets out the Financial Conduct Authority's (FCA) approach to reviewing insurance business transfer schemes under Part VII of the Financial Services and Markets Act 2000 (FSMA) (Part VII transfers or schemes). This part of the Act provides for a firm to transfer all or some insurance business to another firm subject to the sanction of the High Court (the Court) in lieu of the individual consent of each Policyholder for a non-Part VII transfer. The Prudential Regulation Authority (PRA) leads the Part VII process and is responsible for specific regulatory functions like providing certificates. However, we also have an active role in the process with a particular focus on our consumer protection statutory objective. We can object to a scheme based on conduct concerns, even if there is no prudential concern.

1.2 Under Section 110 of FSMA, we are entitled to be heard on an application to sanction a Part VII transfer. The views we give to the Court are based on our assessment of the Part VII transfer against our own statutory objectives, which are separate to the PRA's statutory objectives.

1.3 This guidance is designed to help with both the process and considerations of a Part VII transfer. The information in this document is split into the following sections:

- Chapter 2 – Sets out some factor's firms should consider before contacting us and what they will need to produce in advance of any pre-application meeting

- Chapter 3 – Details the documents we expect firms to provide for us to give our non-objection to the PRA's decision to approve an Independent Expert (IE)
- Chapter 4 – Sets out our overall approach, our expectations and the key aspects we will consider when reviewing the proposed transfer
- Chapters 5 through 7 - Includes detailed information and examples for the key documentation – the scheme documents, the IE report and communications
- Chapter 8 – Sets out examples and factors for Applicants to consider if firms proposing a Part VII transfer (Applicants) intend to make any applications for dispensations from the requirements in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (the Transfer Regulations)

1.4 This document is not intended to explain all aspects of our role in the process or all the issues. Issues that firms may need to consider include requirements from legislative and common law principles, as well as applicable rules, regulations and guidance such as our expectations on the fair treatment of customers in vulnerable circumstances. This document is not exhaustive because each transfer has many variations. We will not always insist firms take the approach set out in this guidance on any particular transfer. However, we expect Applicants to explain why they take a different approach where the guidance is relevant to a Part VII transfer. We will consider each transfer on its own merits and circumstances, and we will take a proportionate approach in our assessment. The purpose of this guidance is to help firms, IEs and other stakeholders identify the areas of difference (from expectations and examples we set out) early enough in the process so that they do not create problems closer to court dates and interfere with timelines.

1.5 This guidance will be of interest to:

- Applicants and their professional advisors
- Independent experts usually appointed by the Applicants to report to the Court on the terms of the scheme.

1.6 It is made under our power to make guidance in Section 139A of FSMA.

1.7 A specific aim of this guidance is to provide examples of comments we made or are likely to make to Applicants and IEs about their submissions on proposed Part VII transfers. We hope that this will help Applicants draft their proposals in ways that minimise challenge from us and lead to a more efficient review process.

1.8 This guidance also supplements our Principles for Businesses and so has the effect described in our Enforcement Guide at paragraphs 2.9.1 to 2.9.6. It will supplement Principle 2 (Skill, care and diligence), Principle 3 (Management and control), Principle 6 (Customers' interests), Principle 7 (Communications with clients), Principle 8 (Conflicts of interest), and Principle 11 (Relations with regulators). We may also ask

Applicants to confirm that their proposed transfer satisfies the expectations in our guidance or explain any divergence from it.

1.9 We expect firms to read this guidance together with our guidance in Chapter 18 of the Supervision manual in the FCA Handbook. We also recommend that Applicants read the PRA Policy Statement on insurance business transfers at Appendix 2 to its Rulebook (PS1/22).

1.10 Each section of this guidance includes one or more examples. They illustrate issues that we have previously identified on Part VII transfers. The examples are not meant to be prescriptive but to help the reader understand our concerns and reasoning when we challenge Applicants. They also give Applicants an expectation of the possible questions and challenges we may raise. It will save time and resources in the long term if Applicants know to expect these questions and actively address the issues involved. It will also mean that the Applicants' proposed timetable is less likely to be jeopardised by issues we raise that need to be resolved before the relevant Court hearing.

1.11 Abbreviations used in this document are:

- FCA: Financial Conduct Authority
- PRA: Prudential Regulation Authority
- FSMA: Financial Services and Markets Act
- IE: Independent Expert
- FSCS: Financial Services Compensation
- TAS: Technical Actuarial Standards

1.12 For further information, please contact our Part VII Team at PartVII&Schemes@fca.org.uk.

2 Initial Considerations

2.1 We urge any firm contemplating a Part VII transfer, and their advisors, to contact the FCA and the PRA as early as possible. While both regulators try to keep each other informed of developments, firms should not assume that, because they have spoken to us, the PRA will automatically be aware of the conversation or vice versa. Contacting both regulators will ensure that we are all aware of the proposed transfer and can allocate resources as early as possible.

2.2 We welcome the opportunity for early meetings with potential Applicants. If there are unusual or complex elements of the proposed transaction, it is a good idea to hold an initial meeting with both regulators present. Please note that when contacting the FCA about a Part VII transfer, you should direct all communication relating to the proposed transfer to the FCA Part VII team who will have overall responsibility for the FCA's engagement with firms during the Part VII process.

2.3 We expect to see a detailed proposed timetable for the transfer as early as possible. We will then review the timetable and give comments. It is important that the timetable allows enough time for each step and if we have any concerns about this, we will suggest changes.

2.4 Once the timetable has been reviewed by the FCA and the PRA, Applicants should highlight any subsequent changes to the timetable itself, or any changes to the Scheme proposals which may mean the timetable needs to change. For example, we would want to know of a change that could mean that more time is needed for the regulators to review documents, or more time is needed to allow for appropriate policyholder communication. These changes should be brought to the attention of the regulators as soon as possible. This is to make sure we have sufficient time to give consent on any revised timetable, or that the changes do not require a change to the timetable, before Applicants reschedule any dates, so that we can plan our resources. We will normally confirm our agreement with the revised timetable or explain why we disagree with it.

2.5 As part of this early engagement with the regulators, we expect firms to include a broad description of the business to be transferred. This should include classes of business, numbers of Policyholders (as defined in the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001. See paragraph 7.5 below), numbers of open claims, etc. Firms should also highlight any early indications of unusual or complex elements of the proposed transfer and any identified risks.

2.6 We expect firms to submit documents on time (according to the agreed timetable) and in as near-final form as possible. Firms should note that we may require a minimum of six to eight weeks to review the documents for the directions hearing and four weeks to review the documents for the sanction hearing. This period of document review (including liaison with the firms in relation to questions or comments on, or changes we suggest to, the documents) generally finishes when Applicants submit the documents to Court ahead of the respective hearings or the Supplementary IE report is published ahead of the sanction hearing. Sometimes we need a longer period to review documents than the minimum timeframes shown above, for example if the scheme is complex or has unusual features. Late submission may result in us requesting to delay planned hearings. When firms draw up their timetable, they should consider the need to factor in time for discussing regulator feedback on the documents, or any policyholder objections raised, and

agreeing any changes or mitigations, which could involve a number of iterations of the documents before we can be satisfied that we have no objection.

2.7 Regulatory fees are paid to the FCA (we collect these on behalf of both regulators) at the start of the formal process. This will normally be at the same time as the firm submits their proposals for the nomination of the IE. Please refer to the FCA Handbook ie FEES 3.2.7 (s) for further information. Regulators will begin reviewing the IE nomination proposals once the regulatory fees have been received. We may charge a special project fee for complex transfers. Where applicable, we will discuss this with Applicants.

3 Review of the appointment of the Independent Expert

3.1 The PRA is responsible for approving or nominating the person proposed as the IE, but it must consult us before doing so. The PRA seeks the FCA's view, including whether the FCA objects, before it makes the decision. Our review will include considerations of whether the IE is able to demonstrate:

- independence
- sufficient skill, experience and resources

Independence

3.2 We will consider the following when we assess the IE's independence:

- How many insurance business transfers the IE or their employer have reviewed for the Applicants and how recently. This is also relevant for the nominated peer reviewer and key members of the proposed team. For example, where Applicants have previously engaged the IE, we may be concerned about the IE's independence. In some circumstances we may object to IEs who have previously worked for the Applicants. However, this is not a firm rule and we will consider each case on its merits, including taking into account the IE's own assessment of the impact of previous engagement.
- If the proposed IE intends to work, in the capacity as IE and/or other capacity, on two interacting projects concurrently or consecutively they must be able to demonstrate that they can act independently. For example by challenging one

project that may affect the other. We may not agree with nominations where we are not satisfied that the IE will be able to manage those conflicts effectively.

- Any work, such as consultancy, which the IE or their employer has already, or will, undertake for the Applicants. Nevertheless, whether the IE or their employer has been, or will be, engaged by the Applicant on other matters is not a conclusive factor in determining whether the IE's independence is impaired. We will also consider the materiality of the work and the capacity in which the IE did or will do it. We do not expect the IE to review their own previous work.
- Whether the IE or their employer is connected (as an employee, partner, principal or consultant) to a firm which has either Applicant, any party to the transfer, or member of the group, as a client (eg to provide audit services). Again, this will not necessarily mean we rule out the nominated candidate from appointment; the regulators will consider each case on its merits.
- Whether the IE or their employer has any other connection with the Applicants, eg an insurance policy, and if this has a material impact on their independence.
- Any potential or actual conflicts of interest from other matters the IE or their employer has been involved in, or as a result of personal relationships.
- Any non-standard fee arrangements, for example, abnormally low fee caps may raise concerns that the quality of the work may be compromised. With insolvent firms we may also be concerned if the fees can affect potential claims settlements. Similarly, for mutuals where the fees are being paid by Policyholders, we may have concerns if fee levels seem too high.
- Is the proposed peer reviewer sufficiently independent from the work of the proposed IE? In addition, can the proposed IE's employer put forward an independent peer reviewer with sufficient experience without compromising resource on the execution of the project? Whether a proposed IE and proposed peer reviewer have worked, or will work, for the same firm is not a conclusive factor in determining whether the proposed peer reviewer is sufficiently independent from the work of the IE. We will consider the capacity in which each of them has worked for the same firm and the work that was or will be performed. Where the IE's employer is not able to identify a suitably independent candidate for peer review the firms may want to consider nominating a peer reviewer from a different firm.

Sufficient skill, experience and resources

3.3 We will consider:

- Specific evidence of relevant experience, especially potential conduct risk issues. Where the wider IE team's experience is weaker, we expect to see evidence of sufficient oversight to balance this. Our consideration of relevant experience does not prevent the nomination of new IEs as relevant experience can be evidenced in

more than one way. For example if the proposed IE worked on a transfer as part of a team or acted as S166v skilled person.

- The requirement of sufficient skill and experience applies across the whole team including the IE's core support team and peer reviewer.
- Key information about the proposed transaction and its features as context for assessing the IE's relevant experience.
- Where the transfer involves a non-UK jurisdiction, we will expect the nominated expert to explain how they will get the necessary expertise to compare regimes.
- Statements that the IE will be able to allocate sufficient resource, including as part of a wider team, to consider all relevant conduct issues, assess their materiality, collect information, complete the IE report and provide necessary updates in the agreed timeframe. This may also include considering the IE's, the core support team's and peer reviewer's other commitments when considered against the projects' timelines.
- Performance on previous Part VII transfers where applicable.

3.4 We expect firms to supply us with the following information/documents to support the IE's nomination:

- a full CV
- a Statement of Independence and of capacity to do the work
- a draft letter of engagement including full details of the IE's fees, including any discounts offered
- details of the proposed peer reviewer (CV, Statement of Independence)
- a full CV for each of the proposed principal team members expected to work on the project

3.5 We do not want firms to propose multiple alternative IE nominations. Firms should be aware that occasionally the FCA and PRA will not agree with a firm's first nomination. In these circumstances it will be helpful if the firm already had an alternative candidate in mind.

3.6 It is also helpful if, when firms nominate an IE and peer reviewer, they indicate why they have made that nomination. Not providing this may delay the nomination reviews so firms may wish to include details of any shortlisted candidates.

4 Overview of our approach

4.1 We expect to file a report at Court both ahead of the directions hearing and the sanction hearing, setting out our views or comments on the transfer to help the Court in its consideration of the scheme. Sometimes we might need to file supplementary reports or letters on top of the two court reports we would usually file. This section sets out further detail on what we will consider and comment on, both to firms and in the body of our report to the Court. These include:

- general expectations
- link to our objectives
- business rationale for the scheme
- background regulatory issues
- competition considerations
- changes affecting Policyholders
- ongoing regulatory requirements
- objections
- unresolved issues

General expectations

4.2 We expect Applicants and IEs to submit near final documents for review. Applicants and IEs should make sure that they consider and address all issues in relation to the transfer that may be of interest to the FCA, including obtaining external advice where applicable. Where some details are not finalised at the time of the initial submission, Applicants and IEs should explain when they will provide this information. However, the nature and/or amount of missing information may indicate that the documents have not reached their near final form and could prevent us from carrying out a full review which may in turn lead to further delays in the process.

4.3 We expect Applicants and IEs to carefully consider this guidance. We encourage firms/IEs to confirm in the witness statement/IE report that they have acted in accordance with the expectations set out in this guidance. This confirmation should also include that they have fully taken into account the considerations which may be of interest to the FCA, or otherwise explain why acting in accordance with a particular point in, or parts of, the guidance is not appropriate or relevant.

4.4 We expect the Applicants and IE to consider whether there are particular issues arising in relation to a scheme which we are likely to want to consider, based on our approach as set out in this guidance, or more generally. This includes material conduct issues where the Applicants and/or IE considers that the Applicants have made a judgement call on a matter that is not straightforward or where there may be scope for affected Policyholders to raise concerns. For example, the Applicants may have considered different options which raise material conduct issues before making a judgement call which they consider on balance meets the guidance or they have fully taken into account the considerations set out. In such cases, we expect the Applicants to proactively provide the FCA with details of those judgement calls, including areas of contention, no later than when they submit the near final draft. It also includes matters where this guidance flags that we have an interest in an issue on which we may raise a challenge with the Applicants or the IE.

4.5 We expect the Applicants and IE to let us know about these issues in good time, with cross references to the specific parts of the documents where the issue comes up, where the Applicants or IE consider it has been addressed and the reasons why. We expect Applicants to raise considerations and issues proactively with us and for a senior manager within the firm to take responsibility for this and to confirm to us that this has been done. We expect the Applicants and the IE to identify any material conduct issues.

Link to our objectives

4.6 Our approach to assessing Part VII transfers is based on the application of our statutory objectives, which are to:

- secure an appropriate degree of protection for consumers
- protect and enhance the integrity of the UK financial system
- promote effective competition in the interests of consumers

4.7 Annex 1 includes a high-level description of our approach to the review of Part VII transfers. This description takes into account our statutory objectives.

Business rationale

4.8 We will first look at the reasons for the proposed Part VII and whether we consider them genuine and plausible reasons for the transfer.

4.9 Applicants should clearly explain the reasons why they are proposing a transfer. This includes not just the commercial considerations but also how they have satisfied themselves that the proposals will not have a material adverse impact on Policyholders. They should outline future plans of the Transferor and the Transferee,

eg viability of business in run-off. We want to make sure that the transfer does not happen unfairly at the expense of the Policyholders or to unfairly benefit one group of Policyholders over another.

4.10 We also want to see the transfer in context. For example, how it relates to any other transfers being proposed in the group or any other significant transactions which are part of a larger re-organisation proposal.

4.11 An example of this is where there are other transfers being proposed into or out of the same entity at a similar time, or another significant proposal that might affect the relevant transfer. Both the IE and the FCA need to be informed of these transfers so we can properly assess the impact on the immediate transfer being considered. We may, for example, have concerns about a proposed subsequent transfer of the business. So, it is important that we are informed of any planned transfers when we consider the first proposed transfer in the chain.

Background regulatory issues

4.12 We will consider whether there are background regulatory issues involving the Applicants that may be of interest to the Court. An example of this is unresolved enforcement proceedings against the Transferee.

Competition considerations

4.13 We assess whether the Applicants and the IE have considered whether there may be an adverse impact on effective competition in the interests of consumers or other competition issues. We do not expect the IE to be a competition expert, but we expect the IE to highlight any matters which could affect Policyholders.

4.14 Examples of issues that may have an adverse impact on effective competition, and which we expect the IE to highlight, include:

- Changes which affect a Policyholder’s ability to switch providers. For example, when the transfer is in a niche area and might restrict Policyholders’ future choice of providers.
- The exchange of information between the Applicants especially sensitive information - that is not information which is necessary for the transfer.
- Provisions in the scheme document that have the effect of reducing competition between firms in the future. This might occur if, for example, the scheme contains a clause that restricts the Transferor from targeting promotions to the transferred Policyholders.
- Transfers caught by multi-jurisdictional merger control rules.

Changes affecting Policyholders

4.15 We want the Applicants and the IE to demonstrate that they have adequately considered what may be changing and have sufficiently analysed how, and to what extent, there may be an adverse or positive impact on Policyholders. We will consider in detail whether:

- The Applicants have considered whether there are sufficient protections in the transfer documentation or proposals to mitigate against possible adverse impacts on Policyholders, including, where relevant, compensation.
- Any changes to how the business will be run or operated, for example changes in a firm's approach to claims or changes intended to accelerate the run-off (for example by adopting a policy of actively seeking commutations or policy buy-backs).
- The Applicants and the IE have considered the scheme's impact on Policyholders in vulnerable circumstances, how vulnerability was taken into account in the design of documents and in providing responses to Policyholders' questions and objections about the transfer.
- The Applicants and the IE have done enough to identify previous statements made by the Applicants, such as on their website or Policyholder communications including policy documents, which Policyholders could seek to rely on to argue that the scheme is effecting a substantive change to their expectations to which they object. The Applicants and IE should consider how to address possible issues, including, where appropriate, whether the Policyholder notifications relating to the proposed Scheme should address these issues and, if so, whether they do so in enough detail and with sufficient prominence.
- The IE considered the relevant information and the analysis identified above. We will also consider whether they have looked at appropriate protections and proposed mitigation and considered what can be proposed to allow the IE to be satisfied.
- How the Policyholder communications describe all areas of potential change which may have an adverse impact, and any mitigating or compensation proposals.
- The Applicants have adequately explained and justified where they wish to use arguments of non-materiality or proportionality. Also, whether the IE is satisfied with these arguments and has demonstrated an appropriate degree of independent challenge.
- The description of the scheme is clear and fair, contains enough detail and is sufficiently prominent.

On-going regulatory requirements

4.16 We also consider the transfer in light of Applicants' ongoing regulatory obligations (including the Principles for Business referred to in paragraph 1.8). Examples include:

- The resources available for the transfer, whether business as usual services and service standards may be affected or any adverse impact on governance arrangements. Our general expectation is that Policyholders are not required to pay any costs associated with the transfer.
- Regulatory requirements will continue to apply during and after the transfer and are not implicitly overridden by the Court. For example, we will challenge provisions for with profits funds which are inconsistent with COBS 20. We will do so even if these provisions were permitted under a prior scheme sanctioned before COBS 20 came into force. There are transitional provisions in COBS 20 which allow arrangements sanctioned before relevant rules came into force to continue. However, our view is that these are not available where the arrangements form part of the new scheme after the rules came into effect. We know that some firms received advice contesting this view and may wish to have the matter considered in Court. In some cases, we have considered applications for a waiver/modification from the relevant rules where firms can demonstrate that they meet the relevant statutory tests.
- When Applicants argue that there is no material adverse impact, they should not overly rely on the Transferee being subject to the same regulatory regime. We expect firms to demonstrate that there is/will be no material adverse impact. The IE should describe how they interpret the term 'material' and to assess whether Policyholders or groups of Policyholders are affected. We will review the IE's description and challenge where we consider it to be inappropriate. This is particularly the case where it might allow quantifiable reductions in benefits to be considered non-material. We will also assess whether the IE's evaluation of whether there has been a material impact is sufficient.

Objections from Policyholders and other interested parties

4.17 Applicants should respond to objections in a timely manner and make sure that they have the resources in place to deal with Policyholder responses. All staff handling Policyholders' queries and/or objections should be appropriately trained and there should be suitable arrangements in place to escalate complex or challenging queries or concerns raised, or any objections to ensure that they have been appropriately and considerately addressed. Where appropriate, this may include ensuring that the affected policyholders have sufficient detail and understanding of the firm's position and may mean that firms should consider, in appropriate cases, engaging (including potentially with the IE) directly and considerately with the affected Policyholders' concerns.

4.18 Where Policyholders' objections are based on a perceived inconsistency between the Applicants' previous statements (for example on their website or policy documents) and the proposed scheme, the Applicants should take reasonable steps to address those concerns.

4.19 Consideration of objections should involve proper consideration of the substance of the issues, including how significant Policyholders' concerns can be mitigated. The IE should consider objections and significant concerns raised from the perspective of Policyholders, and also consider whether the Applicants have done enough to respond to them and also to address the substance of concerns about the potential effect on Policyholders.

4.20 The FCA will provide an account of objections in its court reports. We will consider in detail:

- objections raised by Policyholders, along with the Applicants' and IE's substantive response to, and consideration of, those objections
- how the Applicants have categorised Policyholders who continue to 'object'
- how the Applicants have addressed the initial concerns of those Policyholders who no longer wish to raise concerns or object
- how the Applicants propose to set out for the Court the representations of Policyholders who believe that they may be adversely affected

4.21 Please note that we may take a different view to the Applicants or IE, depending on whether the objectors' concerns have been adequately addressed. We may also ask the IE to give their opinion on a specific objection.

Unresolved issues

4.22 We may refer to any issues which we do not consider fully resolved in our reports to the Court. If there are any issues that have not been resolved before the directions hearing, we expect the Applicants and the IE to follow up on them in their respective documents for the sanction hearing.

4.23 The issues may be significant enough to justify our objection to the proposals but, even if we do not object to the scheme more generally, we may still set out our concerns on an issue, which may prompt the Court to take its own view on the issue.

4.24 Where Applicants fully resolve any issues before the relevant hearing, we may decide that these do not need to be brought to the Court's attention. Discussions between the Applicants and us about resolving outstanding issues may affect the Applicants' timetable.

4.25 The following sections give more specific detail on the documentation the firm provides and how we review it:

- the scheme document: see Chapter 5.
- the form of the IE report: see Chapter 6.
- communications strategy: see Chapter 7.
- applications for dispensations from the Transfer Regulations: see Chapter 8

5 The scheme document

5.1 We have a particular interest in some parts of the scheme document. In this section, we give examples of where we raised concerns and how these were resolved. As explained in Chapter 1, these examples are meant to help Applicants understand our concerns and reasoning.

5.2 In this chapter we specifically cover:

- clarity on business and liabilities being transferred
- continuity of proceedings
- changes to the scheme
- changes to the 'effective date' of the scheme
- requests to change the scheme involving the Court exercising its powers

Clarity on business and liabilities being transferred

5.3 The PRA, the Financial Ombudsman Service and the FCA want to make sure there is no doubt about which liabilities, if any, remain with the Transferor or pass to the Transferee after the scheme is effected. Similarly, where the Transferor proposes to become de-authorised and possibly wind up, there should be no doubt that all of the possible liabilities are being transferred.

5.4 The language used in the scheme document should leave no uncertainty about the possible liabilities being transferred. These include, for example, paying claims, mis-selling, any negligence, failings or other conduct involving their insurance business that may incur liability, whether or not the possible liability is to a Policyholder). Any uncertainty may impede the Transferor in applying to us to cancel regulatory permissions. When the Financial Ombudsman Service considers customer complaints, it may ask Applicants to revisit the issue of liabilities and ask for further

clarification and agreement between the parties on the intended scope. In turn, Applicants may need to consider whether they are required to make further regulatory notifications.

5.5 Applicants should also ensure that the IE is fully aware of the nature and extent of the transferring liabilities. Where the Applicant intends to transfer mis-selling liabilities under the scheme, the IE should specifically consider the transfer of these liabilities and take account of this in their assessment of the scheme. We expect the IE to consider the implications of the scheme:

- any current and/or pending Financial Ombudsman Service complaints
- if the ability of affected Policyholders to bring complaints to the Financial Ombudsman Service in the future (in relation to pre-transfer acts or omissions) will be impacted by the proposed scheme
- if the Financial Services Compensation Scheme (FSCS) coverage will be affected in any way

5.6 The business being transferred must be clearly defined and identifiable. For example:

- We have seen some schemes refer to certain business in an ambiguous way, which creates difficulties of interpretation post-transfer. This includes difficulties for the Financial Ombudsman Service if complaints are made about a party to a Part VII transfer and/or in connection with transferred business.
- The position on excluded policies should be clear. We will challenge a scheme that does not fully explain which policies are excluded from the transfer.

5.7 There should also be no ambiguity about the liabilities that are being transferred with the business. Where all the insurance business is being transferred, and the Transferor will be applying to cancel its regulatory permissions following the transfer, we expect all liabilities to be transferred. We have seen for example, references to the transfer of 'all liabilities whatsoever' with liabilities being 'present or future, actual or contingent'. The following points should be read accordingly:

- Depending on the nature of the business transferring, there should be specific provision within the scheme documentation in all of these circumstances:
  - Where all the insurance and associated liabilities are transferring, this should be specifically stated. If liabilities for mis-selling are being transferred, then this should be expressly stated in the scheme document. Depending on the drafting of the scheme document (for example, if there is a transfer of all insurance and 'associated' liabilities), this may simply require a statement 'for the avoidance of doubt' to specifically address mis-selling liabilities.
  - If liabilities in connection with lapsed, matured, surrendered and expired policies are being transferred, depending on the nature of the transferring business.
  - If liabilities in connection with quotations not proceeded with and those that

did not become policies, like those due to an administrative or processing error, are being transferred.
  - If liabilities in connection with reinstated policies are being transferred.

  This is not an exhaustive list, and we expect the Applicants to be open and transparent about the possible liabilities and clearly identify any areas of potential uncertainty.

- It can be ambiguous if the scheme refers to liabilities 'under' a contract of insurance. We want to understand what the commercial intention is and see that the wording matches that intention. The wording may be appropriate where:
  - the intention is to limit liabilities to what is owed under the terms of the contract itself and to exclude other liabilities connected with the contracts. But it will not be appropriate where the intention is for liabilities 'in connection' with the contracts to be included.
- The parties may have agreed that liabilities from the transferring business which are subsequently identified by the Financial Ombudsman Service should transfer. In these cases, the drafting of these liabilities should be broad and clear enough to achieve that. Also, reference should be made to the DISP provisions setting out the scope of the Financial Ombudsman Service's jurisdiction8.
- Liabilities drafted as being 'connected to/with a transferring policy' are likely to be too restrictive to include the following scenarios, which often leads to complaints to the Financial Ombudsman Service:
  - Proposed policies which were applied for but not made, for example, if a firm agreed to set up a policy but it never came into force because of an administrative or processing error.
  - Liabilities connected with an application for insurance which was turned down in a way that creates liability, such as certain errors or discriminatory decisions by the firm.
  - Another firm may have underwritten policies which are now held by the Transferor following an earlier transfer of business. If these policies are intended to be part of the scheme, then describing the transfer of liabilities relating to business 'written by' a Transferor firm is likely to be too restrictive. It may be more appropriate to refer to liabilities 'written and/or assumed by' the Transferor.
  - Where the intention is to transfer lapsed, matured, surrendered or expired policies, then drafting limited to business 'carried out by a firm at the transfer date' is likely to be too narrow.
  - Liabilities, such as periodic payment orders, made in favour of Policyholders by the courts which are not automatically transferred. These liabilities may need specific treatment by the Court. This may be, for example, if the Transferor is expressly named by the Court as having liability without any mechanism to transfer that liability. The Applicants will be expected to

explain how they are satisfied that liability for these orders will be transferred.

Continuity of Proceedings

5.8 In most cases, the Applicants intend that all proceedings that are underway, pending, threatened or in contemplation will continue against the Transferee. We expect to see a standard clause included in the scheme document for this.

5.9 We want to see that these clauses are not restricted and that they include any future proceedings, regardless of whether the Transferor or Transferee are aware of or anticipates them. This is partly to avoid any doubt that complaints arising after the transfer in relation to pre-transfer acts and omissions of the transferor can be made against the Transferee and taken to the Financial Ombudsman Service. Applicants should be aware of possible consequential drafting changes to other parts of the scheme. Examples may include:

- References to 'proceedings continued' against the Transferee should include 'or commenced'.
- Proceedings described as 'current, threatened or pending' at the transfer date should also include 'or any other claims or complaints which may be brought in the future including those not yet in contemplation' or similar.
- There should be no ambiguity about the specific types of claims that are covered. For example, not using limiting words such as claims 'under the contract' if the intention is for mis-selling claims to be brought against the Transferee. If the intention is that the types of claim caught are not comprehensive, Applicants should make it clear which types of claim are not included and give their reasons.
- Proceedings should specifically include any complaint to an ombudsman.

Changes to the scheme

5.10 Scheme documents sometimes state that minor or technical amendments can be made without returning to Court. Some examples include:

- correction of an obvious error
- changes required by law or regulation
- changes required by generally accepted actuarial practice

5.11 However, some documents contain examples where we consider the changes are likely to require Court approval because there is likely to be some discretion about how these happen, so we will challenge them. An example is changes which may be

proposed to the scheme prompted by changes in management practice. Or changes prompted by actuarial practice where different approaches are permitted (for example where the changes are not limited to 'generally accepted' actuarial practice). Also:

- We expect the scheme document to provide for us to be notified (at the contact details in paragraph 1.12 of this document) of minor or technical amendments in advance and given a reasonable opportunity to object (at least 28 days from the date that the Part VII team at the FCA acknowledges notice of the proposed change).
- When we receive a notification of a proposed change to be made to the scheme without Court approval, we will consider whether the change is minor or technical or is actually 'required' by law or regulation and allows no discretion as to how it is affected. Where there is some scope for discretion or where the firm proposes to go beyond what is actually required, we will consider whether it is likely to have had any impact on a Policyholder's decision of whether or not to object to the scheme, had they been informed at the time we were considering the scheme. We will raise objections if we are not satisfied.

5.12 It is also common to see clauses which allow for future changes (not covered in 5.11 above) with Court approval. Some of the clauses anticipating Court approval contain provisions where we sometimes challenge firms. For example:

- A clause might not contain the proviso that a change like this can only be made where it is necessary to give full effect to the scheme. In these circumstances we question whether section 112(1)(d) of FSMA (incidental, consequential and supplementary matters) allows such a change. Where sections 112(1)(a) to (c) of FSMA be relied on to bring about the change, the sub-sections do not contain this restriction. We still consider that a change relying on these sub-sections will generally be less relevant to the FCA's objectives. In these cases, where a change is eventually proposed which relies on s112(1)(d) of FSMA and is not necessary to give full effect to the scheme, it is likely we will object at the time of the proposed change if there is the potential for harm.
- However, we accept that ultimately it is for the Court to decide. If the Court does permit changes, even though they are not needed to give full effect to the scheme, then we will consider whether further Policyholder communications are required to explain this and allow objections to be made.
- We also expect that any significant change is accompanied by an updated IE report or IE certificate, as appropriate, covering all the possible impacts of the change, not just benefit expectations, on all groups of potentially affected Policyholders (not just the transferring Policyholders). Where possible we expect the IE to be the same as the IE on the original scheme, however, we recognise that there may be circumstances where this is not practical or possible.

- Again, we expect the scheme to provide adequate time for us to object before the hearing. For example, at least six weeks or a 'reasonable period' from the date that the FCA Part VII team acknowledged receipt of notice of the proposed change.
- We want to see provisions which prompt firms to apply for a change to the scheme where there has been an unintended effect on Policyholders, assessed by reference to what was communicated to them in the Policyholder notification.

5.13 An amendment clause that can be used where a return to Court is expected is where the so-called '3i's test' is to be satisfied. This permits a firm to make a change if it is 'impossible, impracticable or inequitable' to implement the terms of the scheme without an amendment. In these circumstances, a return to Court must be accompanied by an IE report providing a view on the potential effect of the change on Policyholders. The regulators should be notified in good time for them to consider making representations to, or being heard by, the Court.

5.14 In some cases, the draft scheme allows for changes to be made in very specific circumstances. An example will be in long term business transfers where the Transferee expects to need to merge, close or split funds, usually with-profits. In these cases, we expect to see:

- The scheme to be as specific as possible about expected circumstances and/or limited to a known event so that the scope for the Transferee's judgement is appropriately limited.
- This scope for judgement might be appropriate to allow the Transferee to adjust to future circumstances and events to ensure Policyholders are fairly treated. However, it should be specified so that it limits any possible adversity or difficulty to assess effects on Policyholders at the time of transfer.
- Confirmation that the merger, closure or splitting is permitted by the terms of the policies (that is, without the scheme having the effect of amending terms or conditions) and does not make those terms more restrictive or otherwise have an affect that could be adverse to the interests of Policyholders. If it is not clear and the applicant proposes to amend terms and conditions to permit these actions, we generally expect that to be very clearly identified, and for them to be amended in a way that is in the interests of Policyholders (directly or indirectly). Any change to terms and conditions, and/or any possible affect on Policyholders of mergers, closures or splitting, needs to be clearly and prominently notified to Policyholders.

5.15 Regarding sufficient protections for Policyholders in the event of such a change, Applicants should consider:

- Whether the change itself is in Policyholders' interests. An example is fund mergers where the fund size diminishes, once business has transferred out, to

such a level that Policyholders may be adversely affected due to increased costs to maintain separate funds. However, it is not uncommon to see an optional fund size trigger as well as a compulsory minimum fund size trigger, to afford reasonable flexibility. Where funds become so small that merging with other funds with similar objectives has sound financial objectives but does not benefit Policyholders because Policyholder charges are fixed then we will question why some of the financial benefits of merger are not also passed on to Policyholders, directly or indirectly.

- Whether the IE report has properly and fully commented on any possible adverse effect to Policyholders. In some circumstances it may also be appropriate to require an Independent Expert's review at the time of the merger, closure or split, to ensure the interests of Policyholders are sufficiently protected. For example, where the terms of the policies are not clear on the scope of the firm's contractual power, the Transferee is afforded significant discretion by the scheme and the implications for Policyholders are potentially significant.
- Whether the scheme requires that there is appropriate review of the merger, closure or split by any appropriate independent governance arrangements, for example, any with-profits committee.
- Pre-notification/non-objection of proposed changes to the regulators.

Changes to the 'effective date' of the scheme

5.16 Scheme documents sometimes contain clauses which provide for Applicants to have some flexibility to change the effective date of the scheme without returning to Court. We set out our comments on these below:

- Clauses like this should not generally be relied upon as a substitute for the Applicants' own contingency planning to ensure they are in a position to transfer at the effective date. We expect these clauses to be used only in exceptional circumstances and only after all other options have been explored.
- The effective date should be set so that the notifications to Policyholders and the IE report do not become out of date and need to be refreshed. A delay of more than three months is likely to fall into this category. However, depending on the scheme, it could be shorter.
- Even where there is a delay of less than three months, we want to ensure that the Applicants have properly considered how best to inform Policyholders of the new effective date, and how the IE reflects and considers this. In some cases, this could include the need to consider individual re-notification, and we will consider whether this is proportionate for the transaction. It is important to ensure that the mechanism employed is effective, so that Policyholders are

directed to the firm, or are clear on which firm, to approach with a question about their policy.

- The PRA will also be interested in any proposals for postponement and given their own objectives, may impose different conditions. When the effective date has not been fixed, there will also need to be a long-stop date for implementation.

5.17 Any changes to the effective date beyond, for example, three months may also require the Court's approval and may be likened to the changes in the previous list. While this is a general guide, the main consideration is to ensure that a scheme's Policyholder notifications are not based on out-of-date information. We do not necessarily consider that any delay beyond three months requires re-notification (there may be other proportionate methods of making Policyholders aware). But it may require re- notification if the information has changed in a way that could affect a Policyholder's decision significantly and we want to see firms give appropriate consideration to the issue.

Requests to change the scheme involving Court exercising its powers

5.18 For requests that involve the Court exercising its powers (for example, under s112 of FSMA) to make ancillary orders, we could object to the use of these powers in the context of a Part VII transfer. This is the case where the ancillary orders powers are being used to change the contractual terms of Policies or the terms of reinsurance contracts. We:

- Will question whether any of the proposed changes are necessary as part of a Part VII transfer. Here we do not, and are not able to, seek to override the Court; we are challenging the Applicants as a regulatory matter to advance our statutory objectives. Ultimately it is for the Court to decide whether or not to exercise its powers. If the Applicants ask for such an order, and we object then we reserve the right to make representations to the Court in our report for the Sanctions Hearing. Where changes are for the benefit of Policyholders but not obviously necessary for the Part VII transfer then we will leave the question for the Court as there may be no harm to warrant our intervention.
- Will expect, where the changes are necessary, that they are clearly and prominently notified to Policyholders, with detail. This will allow Policyholders to assess whether the transfer may have an adverse impact on them and consider any proposals which are intended to mitigate this.
- Will be concerned where the purpose of the transfer is primarily for the commercial reasons of the Applicants (and not primarily for the benefit of relevant Policyholders). In these transfers we want to see that appropriate mitigations are in place to ensure that Policyholders are not adversely affected by

changes in terms. For example, where changes in terms are due to operational differences between Transferor and Transferee.

- May object, where we consider the Applicants are using the Part VII transfer artificially or opportunistically to inappropriately change provisions in the business.

6 Review of the form of the Independent Expert's report

6.1 The PRA is responsible for approving the form of the IE's report but it must consult us before doing so. Our review will not just be limited to a high-level check of whether the report covers the appropriate topics (see SUP 18 for details). It also aims to ensure that there has been detailed analysis and challenge of the Applicants' position, so we can be satisfied that it is appropriate for the Court to rely on the conclusions.

6.2 We will try to review the report as far as possible from the perspective of a Policyholder, including claimants on commercial policies. We expect the report to be easy to read and understandable by all its users and for the IE to pay attention to the following:

- Technical terms and acronyms should be defined on first use.
- There should be an executive summary that explains, at least in outline, the proposed transfer and the IE's conclusions.
- The business to be transferred should be described early in the report.
- The detail given should be proportionate to the issues being discussed and the materiality of the transfer when seen as a whole. While all material issues must be discussed, IEs should try to avoid presenting reports that are disproportionately long.
- IEs should prepare their reports in a way that makes it possible for non-technically qualified readers to understand.

6.3 We sometimes find that IE reports lack detailed and thorough analysis, critical review or reasoning to support a conclusion that there is likely to be no material adverse

effect on Policyholder groups. In particular, we sometimes find that the IE reports lack sufficient consideration and comparison of:

- reasonable benefit expectations, including impact of charges
- type and level of service. This includes details of the analysis to support any conclusions including factors like claims and complaints handling (speed and quality), means of access to the service (including service provided by third parties) and any changes in functionality, speed and usability of service, past performance and customer feedback, reliability of service, number of requests for assistance or complaints, quality and speed of Policyholder support services, quality and frequency of communications
- management, administration and governance arrangements
- where the scheme includes Employers' Liability/ Public Liability claimants and Run Off Claims, we expect the IE to include their view of the quality of the firms' Employers' Liability tracing arrangements
- where there are significant changes during the process, for example due to pandemic or economic fluctuations, we expect the IE to have adequately reflected on these in the supplementary report or for firms to consider whether the proposal has materially altered and needs a fuller reconsideration or delay to the process

6.4 We also sometimes see an imbalance between factual description and supporting analysis. IE reports often include a very detailed description of the transaction and background but much less analysis of the effect on each Policyholder group's reasonable expectations. Our concern here is that the IE often uses the detailed description of the background to compensate for the lack of analysis and challenge of the Applicants.

6.5 This chapter sets out our expectations and gives some specific examples of the things we will consider when reviewing the IE's report. These include:

- the level of reliance on the Applicants' assessments and assertions
- balanced judgements and sufficient reasoning
- sufficient regard to relevant considerations affecting Policyholders
- commercially sensitive or confidential information
- the level of reliance placed on the work of other experts
- examples of over-reliance on the work of other experts
- ambiguous language or a lack of clarity
- demonstrating challenge
- technical actuarial guidance

The level of reliance on the Applicants assessments and assertions

6.6 IEs will sometimes rely on Applicants' assessments to reach their own conclusions. In these cases, we expect the IE to demonstrate that they have questioned the adequacy of the assessments. We may also expect the IE to have asked the Applicants to undertake additional work or provide more evidence to support their assertions to ensure that the IE can be satisfied on a specific point.

6.7 We expect the IE to explain any challenges they made to the Applicants about such underlying information and the outcome in their report, rather than just stating the final position. We will question and challenge the IE where we feel they have relied on the Applicants' assertions without challenging them or asking for supporting detail or evidence.

6.8 An example is where conclusions are supported solely or largely by statements like 'I have discussed with the firm's management, and they tell me that…' followed by 'I have no reason to doubt what they have told me…'. In these cases, we will challenge the IE on whether they have come to their own conclusions. In these circumstances:

- Where a feature of the proposed transfer forms a significant part of the IE's own assessment of the scheme's impact, we will ask the IE to review relevant underlying material. We do not expect them to just rely on the Applicants' analysis of the material and subsequent assertions.
- If there are concerns about matters that fall outside the IE's sphere of expertise, like legal issues, we expect the Applicants to give the IE any advice that they have received. If the issue is significant or remains uncertain, we expect the IE to make sure the Applicants obtained appropriate advice from a suitably qualified independent subject matter expert. We give further information below about the IE obtaining and relying on their own independent advice (6.33 onwards).

6.9 We also expect the IE to challenge calculations carried out by the Applicants if there is cause for doubt on review of the scheme and supporting documents. As a minimum, we will expect the IE to:

- review the methodology used and any assumptions made, to satisfy themselves that the information is likely to be accurate and to challenge it where appropriate
- challenge the factual accuracy of matters that, on the face of the documents or considering the IE's knowledge and experience, appear inconsistent, confusing or incomplete

6.10 We also expect the IE to challenge the Applicants where the documents provided contain an insufficient level of detail or analysis. Specific examples include:

- Applicants' assertions that service levels will be maintained to at least the pre-transfer standard. In this case, we expect the IE to include not only details of the

Applicant’s plans and any gap analyses produced, but also include their view of their adequacy, and governance and oversight arrangements. We also expect the IE to include a comparison of service standards and quality, including where outsourcers are used.

- Where there are concerns that a change in governance arrangements in the Transferee may lead to poorer customer outcomes. Applicants’ analysis is often carried out at a high level. It does not always include reviewing and comparing any of the Transferor’s governance arrangements that produce good customer outcomes with the Transferee’s governance arrangements. An example of these governance arrangements is any committees with conduct responsibilities.
- Consideration of the potential post-transfer strain on resources which could affect the service standards provided to the Transferee’s existing customers and/or control over conduct of business risk. We will expect to see a review of relevant management information indicators and related contingency planning.
- Differences in regulatory requirements, or protections available to policyholders, as a result of the transfer.

Balanced judgements and sufficient reasoning

6.11 IEs will sometimes state that they are satisfied by referencing certain features of the scheme but will not adequately explain how those features have led to their satisfaction. In these circumstances we will expect to see both the evidence and the IE’s reasoning that led to their conclusion.

6.12 We have also seen many examples of schemes where the Applicants have stated that there will be no material adverse impact to Policyholders. However, from the report it is unclear whether the IE is certain that there will most likely not be an adverse impact or whether it is their best judgement but lacks certainty. In these instances, we expect IEs to consider the following:

- Where the IE takes the view that there is probably no material adverse impact, we expect the IE to challenge the Applicants about further work they could undertake to enable the IE to be satisfied to a greater degree.
- We accept that it is not the IE’s role to suggest a different scheme or propose changes to a scheme (unless it is to propose mitigations against possible harm). However, we believe that they should be able to challenge the Applicants to be confident that their report’s conclusions are robust. Applicants and IEs should know that they will need to consider how any proposed changes/mitigations will effect all Policyholder groups.

6.13 When finalising their report, we expect the IE to have checked that the documents they are relying, and forming judgements, on are the most up-to-date available.

6.14 Market conditions may have changed significantly since the IE's analysis was carried out and they formed their judgement. In these cases, we will expect the Applicants to discuss any changes with the IE and for the IE to update their report as necessary. If the scheme document has been finalised, the IE should give more detail in their Supplementary Report or by issuing supplementary letters to the Court to confirm whether their judgement is unchanged. See paragraphs 7.32-7.35 for further information on the Supplementary Report.

Sufficient regard to relevant considerations affecting Policyholders

6.15 We will expect to see IE consideration of all relevant issues for each individual group of Policyholders in all firms involved, as well as how an issue may affect each group. Our expectations of the IE when giving their opinion include the:

- current and proposed future position of each Policyholder group
- potential effects of the transfer on each of the different Policyholder groups
- potential material adverse impacts that may affect each group of Policyholders, how these impacts are inter-related and how they will be mitigated

6.16 To support this, we will expect the IE to consider whether the groups of affected Policyholders have been identified appropriately. For example, this could include instances where certain Policyholder groups' services are provided by an outsourced function which is changing, but other Policyholder groups do not.

6.17 We will also expect the IE to review and give their opinion on administrative changes affecting Policyholders and claimants. Here we expect the IE to include:

- Consideration of the impact of an outsourcing agreement entered by the parties before the Part VII process began, where the administration duty 'moved' from the Transferor to the Transferee in preparation for the transfer. Here, we expect to see a comparison of the pre and post-outsourced administration arrangements so the IE and firms can clearly review and compare any changes to Policyholder positions and service expectations.
- Policyholder service level - we expect the IE and the firms not only to have consideration of the impact on Policyholder service levels due to changes in services or service providers specifically contemplated by the proposed transfer, but also to consider the possible risks associated with the transfer that may impact service levels. For example, the risk that the transferee may change services or service providers to align with its broader offering, or risks associated with the migration of systems or services. We expect IEs to consider whether changes in service levels, provision and migrations could lead to consumer harms and what could be done to mitigate those risks. We expect IEs to consider whether there are differences in the identification of customers in vulnerable

circumstances. In relation to migration of systems or services we expect to see a sufficiently detailed report of the possible impact.

- Also, we will not expect the IE to simply state that, because the transfer will not create any change to the administrative arrangements, there will be no material impact. The IE should consider what might happen if the transfer does not proceed and the possibility that the outsourcing agreement could be cancelled, returning the administrative arrangements to the original state. In such circumstances, the IE should consider the impact on Policyholders and claimants of the outsourcing agreement as part of the Part VII process.

6.18 Where the transferring business involves employers' liability policies the IE should consider the quality of the firms' tracing procedures.

6.19 IEs should also review and give their opinion on all relevant issues for all Policyholder groups where reinsurance was entered into in anticipation of a transfer:

- some firms pre-empt regulatory scrutiny by buying reinsurance against risks before they begin the transfer process. In these instances, the IE should consider if it is appropriate to compare the proposed scheme with the position the Transferor would be in if they did not benefit from the reinsurance contract.
- if the transfer is not sanctioned and the reinsurance either terminates automatically or can be terminated by the Transferee, the IE should consider the scheme as if the reinsurance was not in place.

6.20 The IE may identify particular sub-groups of Policyholders whose benefits, without other compensating factors, are likely to be adversely affected. Here we will want to see the IE take into account the Transferor's obligations under Principle 6 (Customers' interests) of our Principles for Businesses.

6.21 When a loss is expected for a subgroup of Policyholders, we will expect to see IE consideration and analysis of alternatives, even if the IE does not consider this loss to be material. In these cases, we may request that the IE and/or Applicants consider other ways of mitigating the adverse impacts on the affected Policyholders, should they happen, including providing compensation.

6.22 We will expect to see this analysis even if the IE is able to conclude that the Policyholder group as a whole is not likely to suffer material adverse impact, even if a minority may. For example, we will expect to see this analysis where:

- some Policyholders within a group/sub-group will suffer higher charges post-transfer because the Transferee has a different charging structure
- some Policyholders within a group/sub-group had free access to helplines that will no longer be available or have a significantly altered service after the transfer

6.23 When an IE is assessing the potential material adverse impacts on various groups of Policyholders, we may feel they have reached their conclusion based on the balance

of probabilities and without adequately considering the possible impact on all affected Policyholder groups.

6.24 As a specific example, we might consider the right of Policyholders to make a claim on the FSCS following a cross-border general insurance transfer:

- The IE may say they are satisfied that there is no material adverse impact on Policyholders because of the Transferee's capital position (meeting relevant requirements), and the short-term nature of the liabilities (for example, annually renewable). The IE may conclude from this that it is unlikely the Transferee will fail, and Policyholders need recourse to the FSCS as a result. While we accept that this is a potentially relevant consideration, we will not be satisfied with this view without further evidence. For example, some evidence and analysis of why (given the size and complexity of) a particular firm may make a default, before the time that Policyholders have to claim on policies, is extremely unlikely.

6.25 In summary, we expect to see the consideration, evidence of challenge, and reasoning to support the IE's opinion that a change due to the Part VII transfer will not materially and negatively affect a group of Policyholders.

Commercially sensitive or confidential information

6.26 Often the IE will need to consider commercially sensitive or confidential information as part of their decision-making process. In these circumstances, we remind IEs of their duty as an independent expert to consider Policyholder interests, as this information will not be publicly available. Examples include:

- where 'whistle-blower' information relevant to the scheme received is forwarded to the IE by the firm
- where we are aware of enforcement action in progress with one of the Applicants

6.27 In these situations, we expect to see the analysis and the information that is relied on and require it to be sent separately from the IE Report. It is also possible that the Court may want to see this information without it being publicly disclosed. The IE may wish to consider sending a separate document with further details, solely for the Court's use and not for public disclosure. Please note that this is at the Court's discretion.

The level of reliance on the work of other experts

6.28 For large scale and complex insurance business transfers we accept that the IE may rely on the analytical work of other qualified professionals, often to prevent their own work becoming disproportionately time consuming. However, we will still expect the IE to have carried out their own review of this analysis to ensure they have

confidence in, and can place informed reliance on, the opinions they draw from another professional's work.

6.29 We expect the IE to have obtained a copy of relevant significant legal advice given to the Applicants, subject to appropriate arrangements to safeguard any legal professional privilege. This should be in writing or transcribed, and approved by the advisor. It should also be in a final form for the IE to review and rely on it. The IE should reflect this review, and the opinions drawn from the advice, within their report.

6.30 The IE may refer to factors that are outside their sphere of expertise and rely on advice received by the Applicants. They should consider whether or not to get their own independent advice on the relevant issue. This situation occurs most often with legal advice, and we discuss our expectations in further detail below.

6.31 We accept that it is not necessary for IEs to get separate independent legal advice in all cases. However, we do expect that the IE will have given due consideration to whether or not they need to get their own advice. For example, where there is some uncertainty about the risks or there may be different outcomes, but it is unclear which outcome may be better for Policyholders. In many cases, whether the IE decides to get independent legal advice will depend on the significance and materiality of the issue. See paragraph 6.33 below for a non-exhaustive list of factors which the IE should consider.

6.32 The IE's key consideration is whether it is reasonable for them to rely on the advice and whether their independence is compromised by doing so. Whether or not the legal advisor has acknowledged that it owes a duty of care to the IE will be relevant to this consideration. We may challenge IEs who rely on the Applicants' legal advice and merely state they have no reason to doubt the advice and/or that it is consistent with their understanding of the position or experience of similar business transfers. Our decision to challenge will depend on how complex the legal issue is.

6.33 In deciding whether to get independent legal advice, we will expect the IE to consider, amongst other things, the following:

- The significance of the issue and the degree of potential adverse effect on Policyholders if the position turns out to be different from what the legal advice considers likely.
- How much the IE relies on the legal advice to reach their conclusions. Also, if they did not rely on the legal advice, will the report contain too little information to justify the view that there is no material adverse impact?
- The difficulty, novelty or peculiarity of the issue to the Applicants' own circumstances.
- Applicants' proposals to explain to Policyholders in communication documents the issues involved, any uncertainty, and any residual risks.

- Whether the Applicants have obtained an adequate level of advice, depending on the issue's significance or uncertainty. Where relevant, whether the Applicants have engaged external advisors with the appropriate expertise and qualifications for the specific subject or jurisdiction.
- Whether any advice already received is heavily caveated, qualified or there is a significant degree of uncertainty.

6.34 Alternatively, the IE may need to explain why they consider that they do not need to get independent advice to be adequately satisfied on a point. For example, the IE's assessment should consider whether there are credible alternative arguments that could be made, whether identified in the Applicant's advice or otherwise. They should also consider where risks are identified but there are no suggestions about how they can be mitigated, or what the impact on Policyholders may be if the risks do occur. These considerations will allow the IE to consider the worst-case scenario of these effects.

6.35 Finally, the IE should consider the Applicant's contingency plans if the risks identified in the legal advice occur and whether this may create negative consequences for Policyholders. This could require further legal advice to explain how Policyholders may be affected or additional proposals to mitigate the risks.

Examples of over-reliance on the work of other experts

6.36 Further to these points, we give some specific examples below where we have challenged the IE around potential over-reliance.

6.37 Often an Applicant will get a legal opinion on whether a transfer involving overseas Policyholders will be recognised in non-UK jurisdictions. The IE may take that advice into account but there may be some material doubt as to whether a court will adopt the approach set out in the advice. In that case, we expect the IE not to use such advice as the sole basis of their conclusion that there are no materially adverse effects. We will expect the IE to consider and be satisfied of the position if the advice turns out not to be the position taken by the relevant court. The legal advice itself should address this and suggest ways of mitigating this risk.

6.38 The IE may be uncertain, for example, because the legal advice is heavily qualified or uncertain and cannot form a conclusion on an issue. In this case, they may wish to get their own independent legal advice to ensure they can reach a more considered conclusion.

6.39 The position may be different depending on whether the Transferor remains authorised/in existence:

- If the Transferor's authorisations are to be cancelled and it could wind up or is planning to do so eventually, acceptable mitigations include the Transferee

making a deed poll which is directly enforceable by Policyholders in either the UK or the relevant jurisdiction. It is unlikely that treating these policies as excluded policies is itself an adequate mitigation. Some IEs have received advice that even if the scheme is not formally recognised in another jurisdiction, the courts of that jurisdiction will still act to prevent the Transferee from denying that it is liable. This may well be correct, but we still expect the IE to assess any material possibility, and any mitigations if it is not.

- Where the Transferor is expected to remain in existence for the foreseeable future, the position is less likely to have an adverse impact. This is because Policyholders will still be able to claim against the Transferor as an excluded policy. We will still expect an IE to examine what possible material adverse impact this could have on Policyholders. For example, any delay in dealing with claims, and any risk that the Transferor changes their approach to dealing with claims because of uncertainty around the Transferee indemnifying the Transferor in full. Mitigations could include some clear commitment by both Transferor and Transferee in the scheme, enforceable by Policyholders, that Policyholders claims will not be affected or delayed because of the excluded policy and indemnity arrangements.

6.40 Our concern here is that the likelihood of an adverse impact should be low enough for consumers not to be adversely affected. We will expect the IE to take a view on that and seek the appropriate reassurances/ensure mitigations are in place.

6.41 In summary, in most cases we will seek to review copies of relevant significant legal advice obtained, with appropriate arrangements to maintain any legal professional privilege. We will expect that advice to also cover what happens if the relevant court does not take the position of the advice and what mitigations can be used if that happens. It is important that all significant material an IE relies on when evaluating a scheme and reaching their conclusions should, wherever reasonably possible, be available for review by the Court and interested parties. Where material is commercially sensitive there are mechanisms that allow the Court and IE to review without detailed disclosure to all other interested parties.

Ambiguous language or a lack of clarity

6.42 At the start of the document, the IE should provide a description of where they propose to rely on information provided by the Applicants. We will look for any overly general reliance, as it indicates a lack of critical assessment or challenge.

6.43 Some examples we have seen and challenged IEs on include:

- Where a conclusion in the report is that the IE ‘takes comfort’ from certain matters, as opposed to ‘being satisfied’ having taken various matters into account.

- Where the conclusion is uncertain. For example, 'I am satisfied that there is no material adverse effect. However...' but it is unclear how the qualification affects or undermines the conclusion.
- Where the conclusions are caveated, we will review whether these are reasonable in the circumstances. If the caveats involve areas that the IE has not considered, we will consider if it is reasonable for them not to do further work to satisfy themselves and remove the caveat.
- It is also important that the caveat does not undermine the report or the IE's ability to be satisfied on the relevant point. For example, the conclusion may be caveated by 'on the basis of information provided to me'. In these cases, we may ask if the IE should be carrying out their own analysis of the underlying documentation or if they require further information or documentation to be satisfied without making a qualification.

6.44 In summary, where the report does not seem to reach a clear conclusion, either generally or on a specific issue, the IE report should state clearly:

- That the IE has considered and is satisfied about the likely level of impact on a specific point. Where uncertainty remains, the IE report needs to include details of, and reasons for, this uncertainty. It should also include any further steps the IE has taken to get clarification, such as seeking further advice from a subject matter expert.
- How the IE satisfied themselves about the uncertainty they have identified and how they have formed an opinion on any potential impact.

Demonstrating challenge

6.45 To ensure the IE report is complete, thorough and considered we expect to see challenge from all involved parties. This includes evidence that Applicants have made appropriate challenges, especially where they believe there are issues the IE has not fully addressed. It is in Applicants' interests to make sure that the Court, regulators and Policyholders can rely on the IE report, taking into account the IE's disclaimers. We consider that Applicants can make these challenges without compromising the IE's independence. We expect a confirmation that the near-final version of the IE's report had the relevant challenge at the time it was submitted.

6.46 To ensure effective two-way challenge we will expect the IE to engage with FCA or PRA- approved senior management function holders at the Applicant firm. This can be senior actuaries, including possibly the Chief Actuary, the CFO or Senior Underwriters.

6.47 The Applicants should also check the draft IE report before submission to the regulators and make sure it is accurate.

Technical actuarial guidance

6.48 We expect IEs who are both qualified and unqualified members of the Institute & Faculty of Actuaries to pay proper regard to the Technical Actuarial Standards (TAS) published by the Financial Reporting Council, especially those for compiling actuarial reports.

6.49 The revised versions of the TAS which came into force with effect from 1 July 2017 (TAS 100: Principles for Technical Actuarial Work and TAS 200: Insurance) specifically applies to technical actuarial work to support Part VII transfers.

6.50 It is important to note paragraph 5 of TAS 100 states that actuarial communications should be 'clear, comprehensive and comprehensible so that users are able to make informed decisions understanding the matters relevant to the actuarial information'. We also highlight paragraph 5.2 of TAS 100 which states that 'the style, structure and content of communications shall be suited to the skills, understanding and levels of relevant technical knowledge of users'.

6.51 Qualified IEs and peer reviewers should also note the Actuaries' Code and Actuarial Profession Standards documents APS X2: Review of Actuarial Work and APS L1: Duties and Responsibilities of Life Assurance Actuaries. IEs and peer reviewers should adhere to the required standards of their professional body at the time when they do the work.

7 Review of the communications strategy

7.1 Applicants should recognise that the requirement to notify Policyholders and advertise the scheme is a fundamental protection within the Part VII process. Adequately notifying Policyholders and other interested parties, as well as advertising the scheme, complements the IE report, which cannot itself examine the position of each individual Policyholder.

7.2 An essential way to protect Policyholders' interests within a Part VII transfer is that each Policyholder has the opportunity to fully consider the scheme and its possible effect on them. The Policyholder can then make appropriate representations to the Court. As individual Policyholders' contractual rights are overridden, it is important that they can object to their policies being transferred.

7.3 We expect IEs to include consideration of the proposed communications strategy and any supporting requests for dispensations from the Transfer Regulations in their report. We also expect to see evidence that the IE has challenged proposed

communications that are not clear and fair and do not adequately explain the transfer and the potential effect on Policyholders and how this is addressed.

7.4 This section details our expectations of the communications strategy. The communications form a large part of our overall conduct consideration and there are a number of components to explore in more depth. The following chapter is split as follows:

- the definition of Policyholder
- identifying and tracing Policyholders and other relevant persons
- content of communications
- individual notifications
- including sufficient information with sufficient prominence
- document translation
- the need for further communications before the Sanctions Hearing
- deficiencies in notifications

The definition of Policyholder

7.5 When Applicants are considering who is to be notified and which groups of Policyholders dispensations are being requested for, a common issue is the wide scope of the definition of 'Policyholder' under FSMA. The FCA (like the FSA before it) takes the view that the definition is very broad and includes but is not limited to:

- beneficiaries under a trust where a policy is taken out by the pension trustee. For example, pension 'buy-in' policies where the liabilities remain with the trustee who insures against the risk of making payments to its members under the pension scheme
- 'buy-out' policies where the trustee's liabilities to pay are transferred to an insurer and there are dependents who may receive payment in certain circumstances eg dependent relatives
- employers under an employers' liability policy or group pension scheme
- third-party claimants under a motor insurance policy where the insurer has notice of the claim and the address of the claimant
- any potential claimant under a policy, regardless of whether the possibility of claiming is remote

7.6 Some Applicants take a different view of the scope of the definition of 'Policyholder'. We also acknowledge that there are compelling different views about some of the categories above. For example, employees who have not made a claim - and where there are currently no circumstances where they can - and where the employer is not

at risk of default, and 'buy in' policies. However, in these cases, the Applicants have decided not to pursue their interpretation of the point, while also not conceding it, which we are content with, and instead use dispensations to achieve the same outcome.

7.7 We welcome Applicants approaching the difference in interpretation in this way. In general, we do not object to these types of applications for dispensation, usually on the grounds of proportionality (see para 8.12 onward) or impracticality, where Applicants have provided relevant reasons and supporting evidence.

Identifying and tracing Policyholders and other relevant persons

7.8 We expect Applicants to set out, in enough detail, within the witness statement(s) the various classes of Policyholders and other persons caught by the definition of Policyholder before any dispensations are applied.

7.9 Applicants should ensure that they have included all potential classes of Policyholders including:

- transferring Policyholders
- Policyholders remaining with the Transferor
- the Transferee's existing Policyholders

Where there are sub-groups of Policyholders within these classes that require different treatment and notification, the witness statement and communication documents should clearly identify and describe them.

7.10 We also expect Applicants to confirm and demonstrate to us, subject to dispensation applications, that they have made all reasonable efforts to identify, trace and contact Policyholders and other relevant persons such as reinsurers and coinsurers in addition to any business-as-usual tracing.

7.11 Where Policyholder records are incomplete, our expectations are detailed below:

- Where records exist but are not held electronically, we expect Applicants to explain their approach to getting information from any non-electronic/manual sources.
- Applicants may propose to apply for a dispensation from notifying Policyholders whose details are held in non-electronic sources. In these cases, we expect to see evidence that they have fully considered the viability and cost/benefit of supplementing their electronic records with data from manual records.
- Where records are incomplete or not held, we expect, in the first instance, Applicants to explain their approach to locating Policyholder details such as public

database searches, using credit reference agencies and website searches. Where these efforts do not identify all relevant Policyholder details then it may be appropriate for the Applicants to apply for a dispensation (see below). If an Applicant applies for a dispensation, we will take into account the efforts the firm made when we consider whether or not to object to the application. Generally, we expect Applicants to use more than one method of tracing.

- Records may be kept by a third-party, such as coverholders, a broker or third-party provider of connected services such as bank accounts. In these cases, we expect Applicants to engage with the third party when they formulate their communications strategy and demonstrate that they have taken all reasonable steps to get those records or to assist the third-party in making notifications on their behalf.
- Applicants should ensure they have contractual arrangements with third-parties to request this information or assistance. If any existing contractual arrangement does not contain such provisions, we expect Applicants to change or supplement their contractual arrangements to ensure they have access to information and reasonable assistance. If not, it may suggest that Applicants do not have adequate systems and controls in place to ensure that they can comply with relevant regulatory requirements, which may require separate supervisory action from us.
- Contractual relationships may provide that third-parties are required either to provide the information to the insurer or to pass on insurer communications to Policyholders. In these cases, we expect Applicants to take reasonable steps to ensure these contractual obligations are being carried out so that Policyholders are properly informed of the proposed transaction. As notifying Policyholders is a legal requirement; we generally do not accept arguments that third parties are not prepared to cooperate because they are concerned about data protection. We expect insurers to ensure that they take all reasonable steps to challenge third parties that seek to refuse cooperation on this ground.
- We also expect coverholders and brokers to cooperate with the insurer’s data request for assistance in relation to Policyholder notification in accordance with Principles 6, 7 and 11. If coverholders and brokers object to such request, Applicants may, after taking all reasonable steps themselves to resolve the issue, refer the matter to us. Applicants, nevertheless, should engage with third parties well in advance to allow sufficient time to consider other contingencies in the case of a dispute in relation to a data request.
- In the rare instance the above steps do not deliver Policyholder records, we will expect to see alternative proposals for notification.

Content of communication

7.12 Our interest here is to ensure that the Applicants' communications (including the formal Legal Notice required by the Transfer Regulations, the individual Policyholder communications, website material and any advertising) are clear, fair and not misleading.

7.13 All communications will need to:

- be easily understood by a person with limited technical insurance knowledge
- not have a dissuasive effect in terms of their structure or the way they are drafted
- contain adequate information about the transfer itself, including ensuring that the firms involved can be identified sufficiently easily
- meet the formal requirements and language for Policyholders' rights used in Part VII and the Transfer Regulations
- give enough information and balanced explanation to allow Policyholders to take an informed view about the possible impact of the transfer on them, any potential adverse impacts they should consider further and whether to make representations to the Applicants and/or the Court
- where appropriate, direct Policyholders to further material including specific information about the potentially adverse effects, including situations where the effect falls on Policyholders of specific cohorts.

7.14 Specifically, regarding the Legal Notice, we will expect it to:

- Identify the parties in a way that allows Policyholders to readily recognise them. For example, where appropriate, the commonly used names of the firms or brand names used for relevant business. Where practicable, include any previous names where the business has been in run-off. Where the firm does not consider it practicable, we will expect to see the Applicants' reasons.
- Give clear telephone contact numbers, including for Policyholders who are abroad to call. These should be freephone numbers wherever possible and staffed by representatives of the Applicants at set times. Phone lines should be open at appropriate times to include overseas Policyholders (so not just 9-5 UK time) where the location of overseas Policyholders is identifiable, and the arrangement of overseas call centre is proportionate and practicable in the circumstances. If that is not possible provide an answer phone option or email address.
- Clearly state that if the Policyholder believes they may be adversely affected by the transfer, they can make representations which will be considered by the Court. Firms should take care not to dissuade Policyholders from making representations by, for example, suggesting that appearing at Court in person is the main or only way they can make representations.

- Where the Legal Notice asks that Policyholders respond by a certain date for practical reasons, it should be clear that this is a request and not a requirement. It should also be clear that Policyholders can still make representations up to, and at, the Sanction Hearing.
- Clearly state that representations can be made in writing to the Applicants or by telephone to the contact number and/or in person or by representative at the hearing.

Individual notifications

7.15 Our review of the notifications will include the literature's tone, content and whether it is clear and concise. We expect Policyholder notifications to be transparent, balanced and not misleading. They should include explanations of what the transfer may mean for Policyholders so that they can form their own view.

7.16 Notifications should avoid discouraging effects such as:

- Stating that the Policyholder does not need to do anything. Instead, Policyholders should be encouraged to carefully consider the material in the letter and attachments. Reference to next steps may refer to not needing to take further action unless the Policyholder is unsure about the proposals, has questions, wants clarification or thinks they may be negatively affected.
- Applicants should avoid giving the impression that because the Court, the IE, and/or the FCA are considering the proposals, this implicitly means that Policyholders do not have to.
- Applicants should clearly set out the potential risks of adverse impacts for Policyholders. They should not downplay these risks or give the impression that Policyholders do not need to consider them further to assess how they may be affected. However, the IE's consideration of the issues and any proposed mitigants should be referred to, in a balanced way, to allow Policyholders to take a view of the proposals.
- The call 'script' that Applicants' staff use for telephone queries must be consistent with the notifications. Where a Policyholder asks, 'Is anything changing?' they should not, for instance, only be told that there are no changes to the terms and conditions, if there are other changes to consider. We expect the Applicants to give a full explanation of the proposals and any identified Policyholders considerations. We expect Applicants to have transcripts of calls (particularly, in relation to objections of Policyholders) available for the FCA to request and review.

7.17 They should not use misleading descriptions of the Court or Part VII process. For example:

- When describing the protections under Part VII, reference to the FCA's review should not be given greater prominence than, or be listed ahead of, references to the IE's report, the Court's own consideration and Policyholders' rights to make representations or raise objections. It is fine to refer to the FCA having been consulted and/or having the opportunity to raise objections.
- When describing the protections under Part VII, we expect that Policyholder notifications and the opportunity for Policyholders to make representations are referred to as a key protection. This is because the IE will not be able to review the position of each Policyholder. It is vital that Policyholders are alerted to the fact that their own consideration of the scheme is important, and they should not just rely on the IE's general conclusions, the Court or FCA reviews.
- Applicants should use the same language and terms in the Legal Notice when describing what Policyholders should do if they have a question or want to make representations.
- References to what the Court may take into account should not suggest or give the impression that it has a specific consumer protection role. While this clearly forms part of the Court's consideration, we want to avoid giving the impression that Policyholders should be less likely to make representations because the Court will, in effect, look after their interests.

Including sufficient information with sufficient prominence

Covering letters

7.18 We understand Applicants' desire to avoid information overload in covering letters, but we think that there is a balance here. We consider covering letters to be useful in providing an overview of the transfer, the Court process, which documents Policyholders should read and how to ask questions or make representations. We expect that covering letters should also refer to key aspects of the transfer that will be relevant to Policyholders, stating where any attachments give further details.

7.19 For example, we consider it important that all the communications highlight any aspect of the Applicant's service which may be changing or where there are risks to Policyholders because of the transfer.

7.20 Where these risks may be relevant to Policyholders' assessments of whether they may be adversely affected, it is appropriate to mention them in the covering letter and direct Policyholders to the additional detail in the attached Q&As, summary guides and/or the IE report summary.

7.21 There may also be important administrative changes that Policyholders must be informed of in a prominent and clear way, such as changes to direct debit payment instructions. The covering letter should clearly highlight these.

7.22 Our starting position will always be to challenge the need to make any changes to Policyholder rights, interests or expectations. However, if these changes are unavoidable, we will challenge firms to set out how they plan to mitigate or compensate for any possible adverse impact and clearly and prominently set out these proposals.

Attachments

7.23 Any attachments should include details of material changes or risks that may be relevant to a Policyholder's consideration of whether they may be adversely affected by the transfer.

7.24 Our aim when we review any attachments is to ensure that no Policyholder should need to read the full IE report to assess whether there are risks involved in the transfer or any changes that could adversely affect them.

7.25 We have previously challenged Applicants to include descriptions of risks or changes that the IE has highlighted in their attachments. This may be the case even though the IE has concluded that there is likely to be no material adverse impact, but this conclusion is not straightforward, based on an exercise of judgement or discretion or where uncertainty remains. In these circumstances, it is appropriate to bring this to the attention of Policyholders in the attachments and, where relevant, in the covering letter.

Other communication documents

7.26 Any communications sent to Policyholders should include:

- the IE's report summary
- a supporting document such as a Q&A or FAQ which gives further details and issues for note by Policyholders
- a summary of the terms of the scheme itself
- a description of the effect of the main provisions

7.27 We also expect these attachments to be sent in full, where appropriate. We expect the Applicant(s) to explain why the contents of a Policyholder pack and delivery method is appropriate for the specific circumstances of each transfer.

7.28 Other examples where we will want information to be given sufficient prominence and described in any attached Q&A or explanatory note, including a cross reference to the scheme summary, the IE report summary and any other relevant reference documents, include:

- Long-term business where the scheme expressly provides for changes to fund structures, such as closure, merger or splitting, where the Transferee's approach may differ from the Transferor's. The Applicant should highlight any protections

that the Transferee has made to make sure the changes do not create a material adverse impact. For example, details of any independent reviews and consideration of compensation in appropriate circumstances.

- In a transfer of policies within a with-profits fund where there has been an issue about which fund certain assets were attributable to - that fund or another of the Transferor's funds. While the IE may have taken advice and formed a view, this may not have been straightforward, and an element of judgement will clearly have been involved. Here, we will consider it appropriate to include a description of the issue in the Q&A document, as well as the IE report summary, setting out the key points.
- In a transfer where there is no comparable compensation scheme in the jurisdiction the business was being transferred to. This fact should be made clear to the Policyholders and should feature prominently in the communications. So should the option of moving, at no cost, to an insurer with FSCS or other compensation scheme cover if a Policyholder considers this to be a significant issue. This applies where the firm takes a commercial decision to switch to a jurisdiction without FSCS cover.
- If it is uncertain that a scheme in a specific jurisdiction will be recognised then this will likely be of interest to Policyholders based there.
- Uncertainty about whether a parental guarantee will continue to be available to the Transferee, or a trust arrangement will continue to be available to Policyholders.
- If unit-linked policies were linked to different funds in the Transferee and some degree of judgement was used to decide whether the new funds were sufficiently similar in terms of content, risk and charging. This should be flagged so that Policyholders can consider and take their own view.
- Generally, we do not agree with Policyholders bearing the cost of the transfer. Where, in exceptional circumstances, part of the cost of the transfer is to be charged to the Policyholders and it is suggested that the transfer is, at least partly, actively in the Policyholders' interests, we will require Applicants to explain this fact in the attachments so that Policyholders can take a view on it.

Proposals to notify by digital communications and not by traditional postal methods

7.29 We are open, where appropriate, to the wider use of digital communication methods across the industry. We will take the following into account and want firms to demonstrate that they have been appropriately considered:

- the Policyholder's preferred method of communication is not written mail
- communications with the customer are customarily conducted in electronic form

- there is up to date contact information
- the proposed method is reliable and appropriate
- there is a process for managing failed delivery
- the subject matter of the email/text is sufficiently striking to alert the customer that the notification is important

Document Translation

7.30 Communications should be clear, fair and not misleading. So we expect, as a minimum, that individual notifications and attachments should be in the appropriate language for their audience. The language in which the original policy was written may provide a relevant starting point for considering the appropriate language to use. Where proportionate, we also expect that Policyholders can get other documents, on request, such as the full IE report and scheme document, in the appropriate language. This option should also be made clear in the notification letters.

7.31 Our primary aim is that communications, including attachments, to local residents should be in the local language. However, we recognise that many policies, especially commercial policies, will have been sold based on English language documentation. We will take this into account when considering whether it is proportionate to translate documentation into other languages.

The need for further communications before the Sanctions Hearing

7.32 There can be uncertainty about whether it is necessary to produce a Supplementary IE Report if there have been no changes to the proposed transfer since the main IE report was published.

7.33 We will expect a Supplementary Report to be produced on all transfers, whether or not there are any changes to the scheme or the IE's conclusions. This Supplementary Report should reiterate the main points of the original IE report, provide any material developments as well as confirming or updating the IE's conclusions.

7.34 Applicants will need to ensure they make the Supplementary Report available to Policyholders before the Sanctions Hearing and give them enough time to review it. There must be enough time to enable Policyholders to consider whether or not to make initial or further representations. We expect that:

- Policyholders are given a minimum of two weeks to review the Supplementary Report, as a matter of good practice. However, we expect Policyholders to be

given longer if the Supplementary Report contains substantive new material or changes to anything previously communicated. These include where:

  - the IE had stated in their main report that there were matters of significance that will be covered in their Supplementary Report
  - the Applicant has received significant objections to a change in facts or position from the main report which have resulted in further consideration and substantive responses by the IE

- Information is prominent and is easily accessible on the Applicants' websites.
- Copies of the Supplementary Report will be sent to all objectors, persons stating that they will attend Court and anyone requesting a hard copy of the main IE report.
- Proper consideration is given to whether any changes as a result of new material or issues have materially or significantly changed the proposition originally put to Policyholders. If so, all Policyholders should be notified of the issues and given an opportunity to reconsider their position. We will also consider the material in the Supplementary Report in this light.

7.35 As an example of this, we have previously asked an IE to consider the potential impact of FCA enforcement action which started between the Directions and Sanctions Hearings. On that occasion, we decided further notification was not necessary in light of the IE's conclusions.

Deficiencies in notifications

7.36 Applicants are required to report to the Court and the regulators on how they have complied with the Directions Order by notifying relevant Policyholders and other relevant persons. Applicants are also required to report where they have not been able to fully comply with the Order, and the steps they have taken to rectify such failures.

7.37 We expect Applicants to analyse returns against their estimated figures. The percentage of 'returned' notifications may be significantly above the level that they predicted, or we have seen in comparative mailings. In these cases, we will want the Applicants to provide a reasonable explanation and evidence of the steps they have taken to minimise this difference.

7.38 If we consider the number of returned notifications is significantly higher than anticipated, then this may reveal more systemic issues with the notification process. These issues may be grounds for us to request that the Sanctions Hearing is postponed and request that the Applicants undertake a re-notification exercise.

7.39 Where we find indications that Policyholders have not had the appropriate notice period for that transfer (usually at least six to eight weeks) we will want to see Applicants demonstrate that:

- There is still enough time for Policyholders to review the notification material, consider whether they may be adversely affected and make representations.
- Their proposals to address the deficiency are appropriate in the circumstances. For example, where Applicants propose contacting Policyholders by telephone (see below), this needs to be appropriate given the transaction's nature and complexity, category of Policyholder and the possible effect on them.
- That individual replacement notifications are sent out without delay with an appropriate flag for Policyholders to consider them promptly.
- When contacting Policyholders by telephone, they have:
  - confirmed that the replacement notification pack has been received and that the Policyholder has been encouraged to read it
  - offered to talk the Policyholder through the transfer and the notification pack in detail, giving sufficient opportunity to ask questions and discuss any issues
  - established where possible, and without leading, whether the Policyholder may or may not have any issues with the transfer
- Follow up or alternative arrangements have been put in place where any Policyholders cannot be contacted by telephone and whether these are adequate to avoid Policyholder detriment.
- They have carried out sufficient further checks to ensure that any deficiencies will only affect the Policyholder groups they have identified and not others.

8 Applications for dispensations from the Transfer Regulations

8.1 There will be occasions where Applicants are unable or unwilling to notify everyone who falls under the definition of Policyholder. This chapter sets out how we judge whether to object to an application for dispensation from the Transfer Regulations and covers the following specific points:

- general arguments to support limited notification
- The Aviva Judgement
- impossibility

- practicality
- proportionality
- utility
- availability of other information channels
- notification of non-Policyholders and reinsurers

General arguments to support limited notification

8.2 As a rule, we expect Applicants to support any application for a dispensation from the notification requirements in the Transfer Regulations with adequate reasoning and evidence. We are unlikely to accept general arguments put forward by Applicants in support of an application for a dispensation from the notification or advertising requirements. For example, where:

- the IE has concluded that there is likely to be no material adverse effect on a group of Policyholders and the Applicants apply for a dispensation on that basis
- the Applicant claims that notification will confuse Policyholders or that Policyholders will simply not understand some of the complexities of the transfer
- the Applicant asserts that individual Policyholders have stated that they only want to receive targeted communications

8.3 We are also likely to challenge Applicants if they ask for dispensations on the basis that the costs of notification or advertising will be disproportionate. Here we will expect to see reasonable estimates of the costs of notification and will challenge where we believe Applicants have not shown enough effort to estimate these costs. We will also challenge where they give insufficient reasoning for why the notification costs will be disproportionate.

The Aviva Judgement

8.4 Many Applicants use the judgment of Norris J (In Re Aviva International Insurance Limited [2011] EWCH 1901 (Ch.)) as a starting point for dispensations. This judgement sets out a number of factors to consider when making an application for dispensations. We explain our view on some of these factors in the following sections:

- impossibility of contacting Policyholders – where Policyholder contact information is not available because, for example, it is lost
- practicality of contacting Policyholders – for example where the firm or someone else has Policyholder contact information but it is not practical to use those details to notify Policyholders

- utility of contacting Policyholders – how useful the information will be to Policyholders
- proportionality – where the cost to the firm to communicate something which could be of marginal interest to a group of Policyholders will be expensive
- availability of other information channels – where firms could email Policyholders, publish notifications on their website or advertise more broadly than the Transfer Regulations require

8.5 We will challenge Applicants' proposals where, in our view, they have not taken into account these factors or where they offer insufficient evidence or argument to support requests for dispensations.

Impossibility

8.6 Where firms apply for a dispensation for Policyholders whose names and addresses are unavailable or unreliable, for example where the policies are old (1970s/1980s or before), we expect them to have considered how they can resolve the issue. This can, for example, be by using other tracing or identification methods. However, we recognise that this can be disproportionate.

8.7 We also often see applications involving 'gone-aways'. Here, the Applicants' records show that correspondence sent to the Policyholder at their last known address has been returned because the Policyholder no longer lives there. We will consider each case on its merits but if the percentage of 'gone-aways' recorded is higher than we reasonably expect, we may challenge Applicants' tracing arrangements as in the paragraphs above.

Practicality

8.8 We commonly see situations where Applicants have policies written through brokers and where the broker, rather than the insurer, holds Policyholder records. In these circumstances, we expect Applicants to have notified the brokers and requested that they notify the relevant Policyholders.

8.9 Where the brokers are willing and able to help, we expect Applicants to offer to pay the brokers' notification costs and/or provide postage paid template letters. We will also expect the Applicants to provide details of their arrangements to oversee the notification process. Applicants should be aware that we may check these at a later date.

8.10 We have not objected to a dispensation application where brokers have refused to facilitate the notification process or have withheld Policyholder information from the Applicants. However, we expect Applicants to present a strong case and to

demonstrate that they have considered all reasonable options to make the brokers notify the Policyholders, and any alternative methods for undertaking notification. Our expectation is that brokers and other authorised third parties should help to facilitate the notification process under the FCA's Principles for Businesses, specifically Principles 3 and 7.

8.11 If Applicants have policies that were placed through affinity scheme, marketing partners or group policies, such as banks, unions or employers, they may not have access to Policyholder details. Here, we will consider Applicants' proposals for ensuring that these placing organisations carry out appropriate notifications at the Applicant's expense, use notification packs produced/funded by the Applicants or increase their use of alternative notification methods, such as targeted advertising.

Proportionality

8.12 We will often challenge Applicants' arguments to demonstrate the disproportionate cost of notification against the benefits of notifying a specific Policyholder group. As a guide:

- We will challenge Applicants who simply assert or provide a brief explanation of why they think that the cost of notification is disproportionate. Demonstrating this will require a detailed analysis of the actual costs involved. This should include an estimated amount and not just a description of 'high' or 'expensive' costs. It will also require an analysis of why the benefits to that group of Policyholders are outweighed by the costs of notification.
- We will also consider whether the cost estimates are reasonable or inflated and so should be challenged. We are aware that an Applicant's financial position may also be relevant, for example, if the Transferor is in run-off or in financial difficulty.
- The Applicants should include the supporting analysis, including any additional detail provided as a result of our challenge, in the relevant Applicant's witness statement. This is so that it is also capable of being relied on by the Court as evidence supporting the application for a dispensation from the Transfer Regulations.

8.13 The section below includes some examples of arguments that we have seen based on proportionality and our approach to these.

Manual records

8.14 In some cases an Applicant may have updated their manual files for current customers or 'live' policies, but has only manual records for expired/legacy policies. In this instance we expect Applicants to estimate the costs of searching manual

databases and demonstrate a lack of proportionality as well as covering the relevance of notifying those Policyholders (see 8.26).

8.15 Where only manual records exist, Applicants should consider digitalising these however they may suggest alternative notification arrangements, in support of proportionality arguments. We will take into account, among other things, the number of Policyholders whose details are not held on electronic records, the likelihood of a claim being brought and how, with evidence, the Applicants have formulated a view of these prospects. If the Policyholder numbers and/or the chances of a claim being made are significant then we are more likely to object.

Low probability of a claim

8.16 In general insurance cases, Applicants have argued that while the relevant information is available and accessible, the probability of a claim is so low that the cost of notification is outweighed by the lack of utility. This is common in run-off firms where policies are treated as 'closed' but there is still a residual possibility of a claim. For example, where cover is triggered by when the event happened and not when the claim is made.

8.17 In such cases we expect to see a thorough analysis and supporting evidence showing a claims history and/or arguments as to why it is unlikely that a certain group of Policyholders will claim or claim before a specific date. Where this is not the case, we may challenge Applicants to consider revising their proposals.

8.18 For example, an Applicant may argue, and can demonstrate, that no claims have been received for 10 years for policies written before 2000. As a result, it proposes not to notify Policyholders who took out their policy before that date. In such a case, we will consider:

- Whether just because there have been no claims after a specific date, this is good evidence that they will not arise later. Generally, the fact that no claims have been made historically does not necessarily mean that none will be made in the future. In some cases, it will depend on the facts about whether this kind of data can reliably indicate that it is unlikely claims will be made. This will also involve taking into account the type of business written, the terms of the policy and any risk indicators relevant to the business. We will challenge Applicants to provide this evidence.
- Whether the firm has completed a cost benefit analysis supporting their argument that the cost of notification is disproportionate to the likely Policyholder benefit. Our view is that this is not just a 'utility' test alone.
- For 'longer tail' liabilities, we may ask firms to consider additional notification requirements or mitigation steps. Examples include asbestos claims under public

and product liability policies or deafness claims under an employers' liability policy

Non-transferring Policyholders

8.19 Where the application is for a dispensation for notification of non-transferring Policyholders of the Transferor and/or the Transferee:

- Our view is that when assessing the likely benefit/utility to Policyholders, it is not enough for Applicants simply to assert that the IE has found no potential material adverse impact on these Policyholder groups. This is true, for example, if the IE's conclusions on whether these Policyholders are adversely affected by the transfer are finely balanced.
- We expect there to be some additional factors which may mean these Policyholder groups are less affected which makes the cost of notification even more disproportionate. This may include where the IE concludes that there is likely to be no adverse effect at all for reasons given in the report. It may be either where the effect is very minor because the business is insignificant or where the IE has identified that the group of Policyholders will positively benefit from the transfer.
- We may also take into account the relative size of the transaction compared to the size of either Applicant's business. For example, a transfer which is 5% of the Transferor's/Transferee's business may not be material to the non-transferring Policyholders. However, this can depend on the type of liabilities. For example, if there are specific risks attached to the type of business being transferred or if the business was very profitable for the Transferor.
- As well as considering the size of the transfer by value, the number of policies transferring may also be relevant to the impact of any dispensation, especially in retail business.

Policyholders in non-transferring funds

8.20 In some cases, the transfer involves a life insurance firm with a number of with-profits or non-profit funds. Here, Applicants may seek a dispensation from:

- notifying Policyholders in the funds that are not transferring
- notifying Policyholders in the Transferee's funds to which the business is not being transferred

8.21 In those cases, we will consider carefully the IE's impact assessment, whether the IE is making judgement calls about the potential impact, and any other risks which we will expect Policyholders to be notified about.

Beneficiaries of trusts/employees of an employer

8.22 Where there are beneficiaries of trusts/employees of an employer, we will need to see arguments and evidence to demonstrate that notification will not be proportionate. These may take into account the obligations of the trustee or employer to act in the beneficiaries'/employees' best interests. We also expect Applicants to ensure that:

- They include in any proposed notification to the trustees/employer a request that the notification is passed on to beneficiaries/employees where the trustees/employer considers this to be appropriate in light of their own obligations.
- Where Applicants only have one trustee/employer on record, the notifications should prominently request that this contact notifies any other trustee or employer.
- They provide reasonable assistance, including financial assistance and providing notification packs, to the trustees/employers. This is because we do not accept some Applicants' argument that it is the trustees' own fiduciary duty to notify beneficiaries which then excuses or reduces the Applicants' own statutory obligation to notify. This is not intended to deny that trustees do owe fiduciary obligations to their beneficiaries.
- Where appropriate, newspaper advertising includes the names of trustees/employers which beneficiaries may more readily identify.

Deceased Policyholders

8.23 For deceased Policyholders, Applicants may apply for a dispensation where they do not have details of all executors/administrators on record or to waive notification altogether if payment is imminent. This is regardless of whether they have details of the executors/administrators.

8.24 As well as any arguments and evidence for a dispensation, usually about proportionality, and utility where payment is imminent, we expect firms to include in the notification to the executors/administrators of the estate:

- a request that the notification be passed on to any other person who may have an interest
- relevant examples of the types of person having an interest, such as fellow executors, spouses, children, etc.

Policies with more than one beneficiary

8.25 Applicants may apply for a dispensation for separate notification for all dependants if there are other Policyholders connected with certain type of policy who could bring a potential claim, but the Applicant does not have their details. These may include dependants such as children/spouses regarding a life policy, joint holders of an annuity policy or other named drivers on a motor insurance policy.

8.26 In these cases, if the Applicants apply for a dispensation, we expect them to demonstrate that the cost of notification is disproportionate to the likely benefits, as the main Policyholder will be notified. We are less likely to object to these applications. We expect Applicant's letters to the Policyholders to include:

- a request that the notification is passed on to all other 'Policyholders', ie potential claimants
- clear examples of the type of person this may be, such as spouses/children, joint Policyholders, other named drivers, or others

Utility

8.27 We consider that the IE will need to identify specific factors that demonstrate the information will not be useful or of interest to a group. This should be over and above the IE's conclusion that it's unlikely there will be a material adverse impact on the relevant Policyholders. Here we:

- Believe that Policyholders are entitled to be notified and they alone are empowered to decide whether or not they are 'interested' in the proposals. It is not up to Applicants to decide how 'interested' Policyholders will be in a notification. If Applicants seek a dispensation, they will need to make a strong case.
- Are unlikely to agree with Applicants applying for dispensations who cite the conclusions of marketing field studies that say Policyholders report they only want to receive targeted communications. We are also unlikely to agree with Applicants who say they believe Policyholders will not be 'interested' in being notified. Similarly, we do not generally agree with applications that claim Policyholders will be confused by the communication documents, as the Applicants should be able to deal with this issue by improving the clarity of their communications package.

Availability of other information channels

8.28 Applicants sometimes request that notification be made via their website or that advertising additional to that required by the Transfer Regulations means there is no need for notification. We consider that these methods of notification are not sufficient by themselves because they do not address Policyholders individually.

8.29 However, such methods may be used to support applications on other grounds, for example, impracticability or proportionality. Where Applicants suggest this approach, we will expect them to pay close attention to how effective the alternative information channels are, and show they have sufficiently considered the following:

- using sufficiently targeted additional advertising, for example, by type of business and/or geographical area.
- sufficiently prominent advertising, ie advertising is not only in the notices or business section if it is a sufficiently large retail transfer.
- placing advertising in both the print and online versions of newspapers.
- where Applicants request a dispensation for a large number of Policyholders, we will expect the size and prominence of the additional advertising to reflect this.
- we will also expect to review the proposed website material, advertising and positioning to ensure that it is sufficiently accessible, clear and prominent.

8.30 For website material, our view is that there should be a link from the Applicants' home pages to additional detail explaining the proposed scheme. This link should:

- be very obvious on the home page, preferably in the middle of the line towards the top of the page, but if that is not possible then in another prominent position
- make it clear when there are important updates and also recommend that Policyholders read these
- lead to a main page of information which should be clear, unambiguous and provide background information, the process to follow and details of the stage the process has reached

8.31 The main website page should also:

- clearly explain how Policyholders can make objections and representations to the transfer and include all details of how to do so, such as a relevant email address, contact number of helpline, etc.
- be updated promptly when new information is available
- go live as soon as possible after the Directions Hearing

8.32 The website material should also provide links to other relevant information, such as the IE's and other reports. We expect firms will send Policyholders or other interested parties who requested documents via the website updated documents that subsequently become available. We also expect that firms will send the IE's Supplementary Report to anyone who requested the IE's report.

8.33 Text message or alternative notification methods may be helpful but are likely to be limited to specific circumstances. For example, the transfer could involve mobile phone insurance where the value of each policy is very small but there are many Policyholders and the costs of sending a hard copy notification pack to each will be disproportionate. In these circumstances, text messages may be the best way of contacting the relevant Policyholders, given the nature of their cover.

Notification of non-Policyholders and reinsurers

8.34 We will carefully consider arguments from firms about not following the expectation to notify certain non-Policyholders. For example:

- Former Policyholders who need to know the identity of the insurer on an ongoing basis, ie where there is a past business review in progress and former Policyholders may receive compensation payments.
- Notifications to banks and building societies where transferring policies are linked to mortgages. For example, where the policy is a condition of a mortgage. Clearly, this will only apply where the insurer has been notified of the lender's interest.
- Co-insurers where the risk is insured by one or more insurers, where the Transferor is one insurer. Anyone else with an interest in the policies may be expected to be notified only where that person has notified the Transferor of their interest.

8.35 We will also consider scenarios that are similar to these from firms applying for dispensations from the requirement to notify reinsurers.

8.36 It is possible that Applicants do not have reliable up-to-date contact details and it is unlikely that Policyholders could claim the reinsurance policy. For some insurers there may also be some uncertainty about whether reinsurance remains in place or there may be chains of reinsurance where the insurer does not have the relevant details.

8.37 In these instances, Applicants may apply for a precautionary dispensation in case they have not fully identified all reinsurers. We consider that these are relevant factors. However, we will again look for arguments and evidence to support an application for dispensation on the grounds of disproportionality. There is no need to apply for a dispensation for commuted reinsurances.

Annex 1: The FCA's approach to Part VII transfers as described in the FCA court report annexes (Directions Hearing)

The FCA's approach to the evaluation of schemes in general:

1. The FCA has a duty (Section 1B of FSMA 2000) in discharging its general functions, to act, in so far as is reasonably possible, in a way which is compatible with its strategic objective, and which advances one or more of its operational objectives (see Annex 1). The FCA's general functions include determining the general policy and principles by reference to which it performs specific functions under FSMA 2000 including the policy and principles by which it will carry out its functions in relation to Part VII of FSMA 2000, and the functions of considering what, if any, representations to make to the Court (given its right to be heard in Section 110), and also the FCA's functions in responding to consultation requests from the PRA.
2. The FCA also has a separate duty to discharge its general functions in a way which promotes effective competition in the interests of consumers, in so far as that is compatible with acting in a way which advances the consumer protection objective or the integrity objective (Section 1B (4) of FSMA 2000).
3. The FCA has determined that the principles by which it will carry out its functions in relation to Part VII are to assess whether a proposed transfer of business poses any threat to any of its operational objectives, to its duty to promote competition described in paragraph 2 above or threatens to be inconsistent with its strategic objective. The FCA will take into account the risks of harm to consumers and markets.
4. The FCA's approach is also set out in Chapter 18 of the Supervision Manual of the FCA's handbook of rules and guidance (SUP 18). The most relevant parts of this policy are in line with those in the PRA's Statement of Policy on its approach to insurance business transfers updated in January 2022 which is copied as an attachment to the PRA report.

FINANCIAL CONDUCT AUTHORITY

Annex 2
Summary of feedback received

Consultation title	**GC21/3: Guidance on the FCA's approach to the review of Part VII insurance business transfers**
Date of consultation	8 July 2021 – 31 August 2021
Summary of feedback received	We received 12 responses to this consultation from a wide range of respondents. They included regulated firms, legal firms, advisory firms, and trade associations on behalf of their members. This document provides a summary of the feedback we received and our responses. Overall respondents were supportive of the guidance and welcomed the FCA updating its approach to reviewing insurance business transfers. However, a number of respondents suggested that we could be clearer on how far in advance of the Court hearings we would expect to receive documentation and the need for this to be co-ordinated with the expectations of the Prudential Regulation Authority ("PRA"). We also received requests for various minor clarifications. In a number of areas, respondents asked for amendments which go beyond the scope of this guidance. For example, respondents asked for: • Our guidance to be more prescriptive, phrasing our expectations more strongly in this document. • Development of forums for policyholders to discuss the impact of Part VII transfer proposals collectively. We have not made amendments of this kind. Whilst we appreciate that Applicants want certainty, this guidance is intended to provide information and examples to help Applicants understand our expectations, to help them prepare future proposed transfers and anticipate in advance the kinds of

	issues that will be of interest or concern to us. We do not think it would be appropriate to prescribe how an Applicant must design a scheme, and instead we give examples where we can be satisfied the matter in question is unlikely to be one we object to. The risk for Applicants if they do not choose to follow our guidance is that they can expect more challenge from us on their proposals, which uses up more time, resources and cost, for both the Applicants and the FCA, than need be the case. We may take some of the other suggestions forward, for example policyholder forums, as a separate process improvement initiative. However, this is beyond the scope of this guidance.
Response to feedback received	We would like to thank all respondents for taking the time to reply and for all the constructive feedback we have received. We have carefully considered all responses and have revised the guidance where appropriate. ***Scope of the Independent Expert's review*** A number of respondents felt that the role of the Independent Expert was being expanded, with the Independent Expert now expected to comment in detail in areas such as customer service standards which may be outside of their skill sets. **Our response** – Our focus on customer service standards has always been present but we have found that we have increasingly had to challenge Independent Experts to demonstrate more thoroughly how they have satisfied themselves that there will be no material adverse impact. So we have always taken the view that it is appropriate for the Independent Expert to form a view on this issue, and demonstrate how they have become satisfied, rather than merely relying on assertions by the Applicant itself, as it is a key part of the possible impact on consumers in any transfer. Where the Independent Expert feels that they do not have the necessary skills to comment on this area, we consider it appropriate for them to obtain input or advice from those with relevant skills, in the same way they will obtain specialist legal advice where necessary. ***Expectations around independence of the Independent Expert*** A number of respondents commented on the independence of the Independent Expert and our expectations of what "sufficiently independent" meant. **Our response** – We have clarified this statement to explain what is meant by sufficiently independent in this context and what we would consider when reviewing the independence of the Independent Expert.

Material detriment

Three respondents asked why we had removed the reference to "material detriment" when considering whether the proposed transfer could benefit the Applicant causing material detriment to Policyholders (paragraph 4.5 of Finalised Guidance 18/4 and paragraph 4.10 of GC21/3) and questioned whether this created a disproportionately high bar for Applicants to satisfy the FCA, adding to the costs of the transfer.

Our response – We do not consider this change will result in additional costs to Applicants. The FCA could object to a transfer if one group of policyholders were seen to benefit at the expense of another. However, in the case of Brexit related transfers, the FCA did not object where a group of policyholders were disadvantaged by the transfer on the grounds that the objective of the transfer was to ensure that all transferring policyholders would continue to have their policies serviced.

Advice and guidance to policyholders

A number of respondents asked for clarification on the reference to advice and guidance to be given to customers in vulnerable circumstances and whether this was just in the context of the Part VII Transfer.

Our response – It is our expectation that Applicants give adequate consideration to the needs of customers in vulnerable circumstances and whether they may need extra help when seeking additional information on a Part VII Transfer. For clarity we have removed the reference to guidance and advice.

Co-operation with brokers and coverholders

3 respondents raised questions about the FCA expectations around co-operation with brokers and coverholders in the execution of the Applicants' communication plans.

Our response – We expect Applicants to give sufficient time in their plans to either seek the co-operation of their brokers and coverholders to assist in the execution of the communication plan based on existing contractual arrangements or by supplementing or to seek, in good time, necessary amendments to such contractual arrangements. We also expect coverholders and brokers to assist and fully cooperate with the data request in relation to the Scheme as part of the FCA's general expectations of them as an authorised person. If all reasonable efforts to obtain policyholder records are unsuccessful we expect Applicants to come up with reasonable alternative methods of communication with policyholders. Where brokers or

coverholders are not co-operating, Applicants are able to refer this matter to the FCA and we may consider whether the behaviour of the brokers or coverholders in question accords with FCA's expectations of authorised persons.

Use of call centres and provision of call transcripts

2 respondents queried whether the FCA would now require call centres to be provided in every jurisdiction / language used by policyholders and the need to provide the FCA with call transcripts in all Part VII transfers.

Our response – When discussing communication plans with Applicants it is our expectation that the Applicants would consider using foreign language call centres where this was appropriate and proportionate to the policyholders being transferred – for example where there was expected to be a high number of non-English speaking policyholders it might be more appropriate to provide a call centre to accommodate the local language. We would consider the circumstances of each transfer on case by case basis.

For call transcripts, the practicalities around their provision would be discussed with the Applicants at an early stage when reviewing the communication plans. Depending on the size of the transfer and the nature of the business being transferred – for example life business – the Applicant is likely to already have in place provisions for providing call transcripts within the existing call centres. In such circumstances the provision of call transcripts is unlikely to be unduly burdensome for Applicants. In transfers involving smaller books of business or where the applicants lack the call centres we would discuss alternative arrangements including brief summaries of the points raised by callers.

'Comply or explain'

One respondent felt that the 'comply or explain' approach contained within the existing guidance was disproportionate and not in line with FCA practice.

Our response: It is not our intention to introduce a fundamental change in our expectations by this proposed update. We consider that the guidance already provides Applicants with help to identify areas of a transaction that are likely to differ from the FCA's expectations. We have always expected Applicants to raise with the FCA at an early stage, any areas where Applicants or the IE feel it is unreasonable or not relevant or appropriate in their circumstances to follow the guidance, and the changes in our guidance here make that expectation more explicit. We want this type of discussion between the Applicants and the FCA to take place at the outset or sufficiently early on in the process.

	This will help manage expectations and reduce the scope for delays later in the process, in particular at times closer to the court dates. ***Timelines*** A number of respondents asked for clarification about our expectations around the regulatory review period. **Our response:** We have clarified our expectations in this area and made it clear in the guidance that the regulatory review time includes the period up until the transfer documents are lodged at court and in the case of the sanction hearing, the Supplementary IE report is published. Also, we have ensured that our guidance is in line with the latest PRA policy statements on Part VII transfers. In addition, our guidance now contains examples of the exceptional circumstances (eg complex schemes with unusual features) whereby we may ask for additional time to review the documents.
Changes made to the guidance as a result of feedback received	We made a number of changes to the drafting of the finalised guidance to give greater clarity on the above points. We have made some changes to text where necessary to improve the drafting and address other minor comments about clarity.