

Instructions for Defined Benefit Advice Assessment Tool (DBAAT)

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0 Definitions

0.1 In these instructions and in the **template** we use the following definitions which are derived from those definitions used in the relevant parts of the FCA Handbook and Glossary:

appropriate pension transfer analysis (APTA)	(from 1 October 2018) the pension transfer analysis to support the firm's personal recommendation which is prepared in accordance with COBS 19.1.2BR , COBS 19 Annex 4A and COBS 19 Annex 4C .
attitude to transfer risk	the client's attitude to, and understanding of, the risk of giving up safeguarded benefits for flexible benefits (as defined at paragraph 2.88 below).
cash balance benefit	in relation to a member of a pension scheme or a survivor of a member, means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member where there is a promise about that amount. In particular, this includes a promise about the change in the value of, or the return from, payments made by the member or any other person in respect of the member.
cash equivalent transfer value (CETV)	a lump sum available to the member on transferring their pension benefits into an alternative pension. It is calculated on actuarial principles.
ceding arrangement	the client's existing pension arrangement with safeguarded benefits
client	a retail client as defined in the Glossary to the FCA Handbook
client file	a record of the oral and written communications relating to the pension transfer
critical yield (CY)	illustrate the annual growth rate (net of charges) that the client would need to obtain on an investment of the CETV in order to replicate the benefits provided by the DB scheme .
DB scheme	a pension that pays out a 'defined benefit' (DB) or 'guaranteed' specified amount to the client based on factors such as the number of years worked and the client's salary as described further on the FCA's website at https://www.fca.org.uk/consumers/pension-transfer-defined-benefit
DC scheme	a pension that pays out a non-guaranteed and unspecified amount depending on the 'defined contributions' (DC) made and the performance of investments as described further on the FCA's website at https://www.fca.org.uk/consumers/pension-transfer-defined-benefit

disclosure requirements	the requirements specified in the Disclosure Section summarised in Section 5
employer-sponsored	advice provided to DB scheme members which has wholly or partly been paid for by the employer, often as part of the employer's proposals to change the pension arrangements it provides
example	something that the firm did or did not do which tends to establish that advice or information provided to the client did not comply with the requirements specified in the DBAAT instructions
flexible benefits	(a) a money purchase benefit ; (b) a cash balance benefit ; or (c) a benefit, other than a money purchase benefit or cash balance benefit , calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor)
group personal pension plan (GPPP)	an arrangement by which a number of personal pension plans are provided by the same pension provider, often organised by an employer for its employees
information gathering	the information the firm is required to gather about the client and their circumstances to comply with the information requirements
information requirements	the requirements specified under the heading "Information requirements" summarised in Section 1
insistent client	a client who has been given a personal recommendation by a firm in relation to the transfer of their safeguarded benefits , but who has decided to enter a transaction different from that which was recommended and wishes the firm to facilitate this, as defined more fully at paragraph 4.1 below
insistent client requirements	the requirements specified under the heading "Insistent client requirements" summarised in Section 4
instructions	this document
investment advice	advice relating to the proposed arrangement
key features documents (KFD)	as defined in the Glossary to the FCA Handbook , a document prepared by the firm in accordance with the rules on preparing product information in COBS 13 .
key features illustration (KFI)	as defined in the Glossary to the FCA Handbook , information describing projected performance and the effect of charges prepared in accordance with COBS 13

lifetime allowance (LTA)	the statutory cap on the total value of pension benefits an individual can accrue across all their pension schemes (see paragraph 2.120 below)
money purchase benefits	in relation to a member of a personal or occupational pension scheme or the widow, widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which fall within the rules under pensions legislation
normal retirement date (NRD)	the date (typically linked to the client's age, for example 65) on which the pension scheme is due to pay the client their member benefits
pension commencement lump sum (PCLS)	a tax-free lump sum of money that can be drawn from the pension fund (typically 25% of the value of the fund, subject to the lifetime allowance, for DC schemes) at retirement
Pension Protection Fund (PPF)	the national fund described at paragraph 2.66
pension transfer	a transfer payment made in respect of any safeguarded benefits with a view to obtaining a right or entitlement to flexible benefits under another pension scheme
pension transfer specialist (PTS)	as defined in the Glossary to the FCA Handbook , an individual who has passed the required examinations and is employed by a firm to give or check advice on pension transfers
personal recommendation	as defined in the Glossary to the FCA Handbook .
proposed arrangement	the arrangement with flexible benefits to which the client would move from the ceding arrangement ; takes into account the subsequent intended pattern of decumulation
Requirements	the information, suitability (pension transfer), suitability (investment advice) insistent client and disclosure requirements relating to the pension transfer and associated investment advice , as specified in the Suitability advice sections
safeguarded benefits	means benefits other than money purchase benefits and cash balance benefits .
suitability report	a report that a firm is required to provide to its client under certain provisions of COBS, including COBS 9.4 , explaining (amongst other things) why the firm has concluded that a recommended transaction is suitable for the client
suitability requirements	the COBS 9 and 19 rules in effect during the relevant periods and summarised in the Suitability Section 2 and 3

template	the Excel spreadsheet provided to each assessor to be completed for each pension transfer within the scope of the review
transfer analysis	the numerical or qualitative analysis to support the firm's personal recommendation ; contained in the TVA/TVAS or TVC and APTA
transfer value analysis (TVA/TVAS)	before 1 October 2018, the comparison required to be undertaken by COBS 19.1.2R and prepared in accordance with COBS 19.1.3G and 19.1.4R
transfer value comparator (TVC)	from 1 October 2018 onwards, the comparison required to be undertaken by COBS 19.1.1CR(2)(b) and prepared in accordance with COBS 19.1.3AR and COBS 19 Annexes 4B and COBS 19 Annex 4C
two-adviser model	a scenario in which: (a) two or more firms are involved in providing both advice on pension transfers and advice on investments in relation to the same transaction; or (b) two or more employees within the same firm are involved in providing both advice on pension transfers and advice on investments in relation to the same transaction

1 Background

- 1.1 The purpose of the **instructions** is to provide assessors with practical assistance when completing the **template** and to provide further information to which assessors should have regard when considering:
- (a) whether a firm has complied with the requirements for advice and information on **pension transfers**;
 - (b) where related advice on investments has been given, whether a firm has complied with the **investment advice** requirements; and
 - (c) where a **client** has become an **insistent client**, whether a firm has complied with the **information requirements** and acted in the **client's** best interests.
- 1.2 The **template** and **instructions** take into account what a reasonably competent firm (i.e. one that complied with the relevant regulatory rules at the time) should have known during the relevant period that it provided the advice, not what it should know now with the benefit of hindsight.
- 1.3 The outcomes from the completion of the **template** will be used to assist the FCA to meet our operational objective of protecting consumers from harm.

Limitation of scope

- 1.4 The **template** and **instructions** are specific to the giving of advice on **pension transfers** (including related **investment advice**) and the arranging of transfers for **insistent clients**. They are not and should not be regarded as guidance on how a firm may comply with the **requirements** more generally, or on how to assess whether non-compliance has caused a **client** to enter into a transaction generally.
- 1.5 The **template** focuses on advice relating to a single **DB scheme**. Where the firm is making recommendations on multiple schemes, complete multiple **templates** and clearly cross-reference between them. You can find further information about how to do this in the table below and at [paragraph 1.69](#). You should still carry out a holistic assessment of the advice, taking into account what is captured on other **templates**.

(a)	One client, multiple schemes, one personal recommendation covering all schemes	Record the information provided for each scheme using separate DBAATs (see paragraph 1.69), but have a master DBAAT to assess the personal recommendation .
(b)	One client, multiple schemes, separate personal recommendations	Assess the personal recommendation for each scheme separately using a separate DBAAT for each personal recommendation .

(c)	Joint advice, two schemes, two personal recommendations	Record the information provided for each scheme using separate DBAATs. Create a master DBAAT to assess the personal recommendations .
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General instructions

How the template works

- 1.6 The **template** does not make an automatic decision on the suitability of advice; it is there to support you to make your decision. It will:
- (a) help you to identify the key information on file and consider whether the firm has collected the “necessary information” to make a **personal recommendation** and whether there is enough information to make an assessment on the suitability of both **pension transfer** and any associated **investment advice**;
 - (b) where there is enough information, support you in making an assessment of whether the advice is suitable; and
 - (c) capture and reference the evidence on which you have based your assessment, and also give you space to record the reasons for your assessment.
- 1.7 The **template** itself is an Excel workbook with six tabs which require file review assessors to take six steps (outlined on the next page).

Definition of ratings

- 1.8 Whilst completing a file review, the **template** will make various suggestions on ratings and the assessor will be required to confirm whether this rating is appropriate. To assist assessors, below is a list of the various ratings provided by the **template** and the corresponding definition for each rating.

Information tab

Rating	Definition / action
Proceed to suitability assessment	There is enough information on file to assess the suitability of both types of advice. Proceed to the next section of the template .
A purple box indicates that information is missing	There is information missing on the client file . The firm has not demonstrated that they have complied with the requirement to obtain the necessary information to make a personal recommendation . The assessor should cease completion of the template and take steps to obtain the missing information.

Non-compliant	<p>This rating means that the firm has not collected the necessary information (COBS 9.2.6R) to make a personal recommendation. This means that there is not enough information on file to assess the suitability of the personal recommendation for one or both types of advice; or for the firm to have made a personal recommendation.</p> <p>Use this rating if there is not sufficient information on file to assess whether the personal recommendation is suitable.</p>
Non-compliant proceed to suitability assessment	<p>Check this box where:</p> <ul style="list-style-type: none"> the firm has not collected the necessary information (so your answer to any of questions 1 to 10 is 'no') <p>but</p> <ul style="list-style-type: none"> you nonetheless consider that you can assess the suitability of the personal recommendation for one or both types of advice. You can only do this if there is sufficient information on file to conclude that the recommendation is not likely to be suitable. See the note at paragraph 2.127 about your conclusion on suitability for these cases.

Suitability tabs

Rating	Definition
Suitable	The firm has complied with the suitability requirements .
Unsuitable	The firm has not complied with the suitability requirements .

Insistent Client tab

Rating	Definition
Compliant	The firm has complied with our insistent client requirements .
Non-compliant	The firm has not complied with our insistent client requirements .

Disclosure tab

Rating	Definition
Compliant	The firm has complied with our disclosure requirements .
Non-compliant	The firm has not complied with our disclosure requirements .

Causation tab

Rating	Definition
Yes	It is more likely than not that the firm’s conduct caused the client to (a) transfer to a pension scheme with flexible benefits ; (b) remain in their DB scheme ; or (c) make a decision about how to invest their savings.
No	It is more likely than not that the firm’s conduct did <u>not</u> cause the client to (a) transfer to a pension scheme with flexible benefits; (b) remain in their DB scheme ; or (c) make a decision about how to invest their savings.

General Points

Information tab

- 1.9 This section records the information collected by the firm and held on the **client file** as part of the **information gathering** process.
- 1.10 Fill in each part of the Information tab using the information on the **client file**. Where there is no information on the **client file**, you should leave the section blank. All answers should be based on information recorded up until the firm gave the advice or arranged the **pension transfer**, unless otherwise stated.
- 1.11 Where you are asked to comment or record information in response to a question, the comment should be no longer in length than the number of characters indicated on the **template**.
- 1.12 You must carry out five key actions to complete this tab. The purpose of each action is explained in the right-hand column of this table:

Action	Purpose
Action 1 "Case details"	

Action	Purpose
<p>Record case details of the file review and assessor, alongside details on the firm, adviser and charging basis for the advice.</p>	<p>This information is important to capture but is unlikely to have any impact on the consideration as to whether the firm has collected the necessary information to give suitable advice (except where the advice is given under the two-adviser model).</p>
<p>Action 2</p> <p>Answer ten questions about whether the firm has obtained the necessary information to assess suitability.</p>	<p>For each of the ten questions, where you consider the firm has obtained the necessary information, you should answer "Yes".</p> <p>Where, for any of the questions, you do not consider the firm has obtained the necessary information, you should:</p> <ul style="list-style-type: none"> • in the first instance, do not answer the question and consider whether to contact the firm to obtain the missing information. Note that the template rating will be "purple" to indicate that there is information missing on the file. • where the firm provides further information which demonstrates it has complied with the requirement, you should answer the relevant question "yes". • where the firm does not provide any further information or you consider the firm has not demonstrated that it obtained the necessary information, you should answer the question "No". <p>Based on your answers to these ten questions, the template will either rate the file as:</p> <ul style="list-style-type: none"> • <u>"Proceed"</u> – the firm has collected the necessary information to assess suitability. Proceed to the next section of the template.

Action	Purpose
	<p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • <u>“Non-compliant”</u> – use this rating only after considering whether to contact the firm to see if it has provided all the information it holds about the client in relation to this transaction and/or after attempts to obtain missing information; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • <u>“Non-compliant proceed to suitability assessment”</u> – use this rating for those cases where the firm has not collected the necessary information or there is a purple rating on the template (because you have concluded one or more area is non-compliant) but you nonetheless consider that you can proceed to assess suitability. See the note at paragraph 2.127 about your conclusion on suitability for these cases. • In all “Non-compliant proceed to suitability cases” you will need to contact the firm to confirm whether it has provided all the information it holds about the client in relation to this transaction.
<p>Action 3</p> <p>Record the necessary information on the file (or that can be inferred from the file) in the subsections under each of the ten questions. Where information is inferred, explain the basis for the inference.</p> <p>There are compulsory “Page Ref” boxes for you to indicate where you have found certain information. There are also “UUID” boxes for unique user IDs</p> <p>Note that there are many boxes that assessors can complete and it is not always the case that all boxes must be completed for you to consider that all</p>	<p>This provides a record of the client information that is held on file.</p>

Action	Purpose
<p>"necessary" information has been captured. What is "necessary" may depend on the client's circumstances.</p>	
<p>Action 4</p> <p>Determine (by selecting "yes" or "no") whether the template has rated the information obtained correctly.</p> <p>For example, the template may be suggesting that there is information missing; however, the assessor should still consider whether this is the case or whether, given the client's circumstances, there is actually sufficient information on the file for the assessor to make an assessment on suitability.</p>	<p>This is where you assess whether you agree with the template's rating. Consider whether there are any particular circumstances of this case which lead you to disagree with the template's rating.</p> <p>If the template rating box is purple this means that you have not completed the answers for each area.</p>
<p>Action 5</p> <p>Explain, with reference to the client file, why the rating is correct.</p>	<p>If you have rated a file as "unclear" you must record what information is missing and identify which information requirement the firm does not comply with (the template will assist assessors in this regard by identifying the relevant rule(s)).</p>

"Case details" section

- 1.13 This section captures general information regarding the case review. It must be completed for all cases as it forms the basis of the file review, including the name of the firm and adviser we are reviewing and who undertook the review.
- 1.14 You should record the following information in the relevant boxes:
- (a) **Review details:** Your name and date of the file review.
 - (b) **Advice details:** details of the **pension transfer** and **investment advice** given including:
 - (i) the date of the advice;

- (ii) the date of the relevant **information gathering** at the time of the advice;
 - (iii) what the recommendation was;
 - (iv) whether the **client** transferred;
 - (v) Whether the firm recommended the **proposed arrangement**;
 - (vi) whether the **client** was treated as an **insistent client**; and
 - (vii) details of the charges, including the basis for the charge (whether or not they were contingent or semi-contingent) and the details of both the initial and ongoing charges (in £ and % terms).
 - (viii) A contingent charging arrangement is one where a firm is paid more by a client if a transfer takes place than if a transfer does not take place. **Clients** who do transfer are frequently charged a percentage of the CETV (eg 3%); sometimes, however, the charge is expressed in fixed monetary terms.
- (c) **Firm details:** details of the firm giving the advice, including name, FCA reference number (FRN), whether it is an appointed representative (AR) and (for advice status) whether it gave independent or restricted advice.
 - (d) **Adviser details:** details of the adviser, including name, individual reference number (IRN) and whether they were the **PTS**, and if not, the name of the **PTS**.
 - (e) **Client referrals:** details on whether the **client** was referred by a third party, including whether the third party was regulated, their name, FRN (where relevant) and the adviser name and IRN (where relevant).
 - (f) **Employer-sponsored advice:** details on whether the **client** was encouraged to take advice by their employer, including who paid for the advice and selected the financial adviser.

The ten information areas

1.15 The **template** asks the following ten questions to assist you in assessing whether the firm has complied with the **information requirements**:

1.	Has the firm obtained the essential facts about the client ?
2.	Has the firm obtained the necessary information regarding the client's investment and retirement objectives?
3.	Has the firm obtained the necessary information regarding the client's investment risk profile?

4.	Has the firm obtained the necessary information regarding the client's attitude to transfer risk ?
5.	Has the firm obtained the necessary information regarding the client's knowledge and experience?
6.	Has the firm obtained the necessary information regarding the client's estimated expenditure throughout retirement?
7.	Has the firm obtained the necessary information regarding the client's financial situation?
8.	Has the firm obtained the necessary information regarding the ceding arrangement ?
9.	Has the firm obtained the necessary information regarding the proposed arrangement ?
10.	Has the firm carried out the transfer analysis ?

The Information Requirements

1.16 The basic **information requirements** are, from 1 November 2007 to the present:

(a) [COBS 9.2.1R\(2\)](#), which requires a firm, when making a **personal recommendation**, to obtain the necessary information regarding the **client's**:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation which is suitable for the **client**.

(b) [COBS 9.2.6R](#) which provides that, if a firm does not obtain the necessary information to assess suitability, it must not make a **personal recommendation**.

1.17 Further details are set out below reflecting the detailed COBS provisions about obtaining information.

Area 1. Has the firm obtained the essential facts about the client?

1.18 This section captures whether the firm has complied with the requirement to obtain information about the **client** and their circumstances at the time the advice was given ([COBS 9.2.1R](#)).

1.19 It relates to the requirement under [COBS 9.2.2R](#), which applied from 1 November 2007 to present, to obtain such information as is necessary for the firm (using the numbering from [COBS 9.2.2R](#)):

- (a) to understand the essential facts about the **client**; and
- (b) to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the transaction to be recommended:
 - (i) meets the **client's** investment objectives;
 - (ii) is such that the **client** is able financially to bear any related investment risks consistent with their investment objectives; and
 - (iii) is such that the **client** has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of their portfolio.

Steps to take

1.20 The **template** requires you to record the following information and select "yes" or "no" whether the firm has collected the following information:

- (a) **Is the advice treated on a single or joint life basis?** This information is essential for understanding the **client's** financial situation. For example, the **client** may not be the only individual reliant upon this pension. It may be the **client's** intention that this pension is also used to support a married or unmarried partner. The rest of the information tab needs to be completed and considered with the answer to this point in mind.
- (b) **Client's basic details:** (and partner's and dependents' where relevant) including name and date(s) of birth.
- (c) **Marital status, employment status and current tax rate.** Where we have salary details, we can infer the current tax rate, even if it is not explicitly stated. More detail on tax rates can be found [here](#).
- (d) **Actual or proposed non-UK residency.** This may affect other information points if information relates to funds in a different currency and potentially subject to different tax rates and currency fluctuations. Assessors should consider whether the client's plans or intentions are genuine.
- (e) **Health status and notes** (where the **client** has identified health issues). Where this is not recorded, absent any evidence suggesting otherwise, it can be assumed that the **client** is in good health. See the further commentary on when a client may be eligible for an enhanced annuity at [paragraph 3.19](#), below.
- (f) **Dependants:** include details about the dependants and the client's responsibility for them
- (g) **Vulnerable client:** include details about whether the client was "vulnerable". A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care. For more information see the [Occasional Paper 8: Consumer Vulnerability](#).

Area 2. Has the firm obtained the necessary information regarding the client's objectives?

- 1.21 This section captures the **client** objectives for accessing pension benefits as recorded by the adviser. The firm is required to obtain information about **client** objectives ([COBS 9.2.1R\(2\)\(c\)](#) and [COBS 9.2.2R\(1\)\(a\)](#)).
- 1.22 The information must include, where relevant, information on the length of time for which the **client** wishes to hold the investment and the purposes of the investment ([COBS 9.2.2R\(2\)](#)).
- 1.23 From 1 April 2018, the information obtained must be sufficient to ensure that, in assessing the **client's** best interests, the firm can take into account:
- (a) the **client's** intentions for accessing pension benefits; and
 - (b) alternative ways to achieve the **client's** objectives instead of the transfer, conversion or opt-out ([COBS 19.1.6G\(3\)](#), (4)(a) and 4(e)).

Steps to take

- 1.24 This section only captures the objectives that have been recorded by the adviser:
- (a) If no objectives have been recorded answer "no".
 - (b) If objectives have been recorded answer "yes" and record what those objectives are using the same wording and ranking or prioritisation as the firm.
 - (c) For each objective you identify the template will indicate you can provide further information, in the right hand columns, relating to the amount wanted (to achieve the objective) and the date the amount is needed.
- 1.25 The **template** will ask about the approach to capturing objectives, and whether the objectives are "generic" or "free text" (the use of generic objectives would not by itself result in the **template** showing a purple box). It also asks whether the firm has explicitly prioritised the objectives.
- 1.26 Area 1 asks whether the advice is **employer-sponsored**. Bear in mind that where the advice is **employer-sponsored**, **clients'** objectives may not be well-articulated.
- 1.27 There is a free text box for assessors to expand on any additional information they wish to capture, or comments they may have, in relation to the **client** objectives, including:
- (a) whether the information was collected in a way which was fair, clear and not misleading;
 - (b) whether there is any conflict between the client's objectives; and
 - (c) whether or not the objective is realistic, given the client's circumstances.

Area 3. Has the firm obtained the necessary information regarding the client's investment risk profile?

- 1.28 This section captures information in relation to the **client's** investment risk profile. The firm is required to collect this information to comply with [COBS 9.2.2R\(2\)](#).
- 1.29 The information a firm is required to obtain by [COBS 9.2.2R\(2\)](#) includes, where relevant, information as to the **client's**:
- (a) preferences regarding risk taking; and
 - (b) risk profile.
- 1.30 Prior to 1 April 2018, a firm should have obtained sufficient information to enable it (when assessing the **client's** best interests) to consider the **client's** attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up ([COBS 19.1.7G](#)).
- 1.31 From 1 April 2018, the firm should obtain sufficient information to ensure that, in assessing the **client's** best interests, it can take into account the **client's** attitude to, and understanding of, investment risk ([COBS 19.1.6G](#)(3) and (4)(c)).
- 1.32 The firm must collect information on both of the following measures:
- (a) the **client's** attitude to investment risk. This is also known as the **client's** investment risk tolerance (i.e. their emotive response to taking investment risk).
 - (b) the **client's** capacity for investment loss. This is also known as the **client's** ability to take investment risk (i.e. an objective numbers-based assessment looking at whether the **client** can afford to lose money).

Steps to take

- 1.33 For each of these measures:
- (a) Record in the first box "**Firm's description...**" how the adviser has categorised the **client's** attitude to investment risk and their capacity for investment loss.
 - (b) Record whether the firm used a tool to help assess the relevant attitude to risk, and if the firm used a tool record the name of that tool.
 - (c) Record in the "**Comments**" box any additional comments or observations on the firm's approach, including whether the assessment was carried out in a way which was fair, clear and not misleading and whether the investment risk profile appears consistent across the file.
 - (d) Conclude:
 - (i) If a firm has recorded both measures of risk, you must answer "yes" to this question.

- (ii) If a firm has not recorded information for both measures, you must answer “no” to this question.
- e) If you have concerns that:
- (i) the firm has not undertaken the assessment in a clear, fair and non-misleading way; or
 - (ii) there are issues with the firm’s assessment process;
- you can record any concerns in the free text box provided. Reflect on and record whether these issues are likely to impact on the suitability of the firm’s advice. If the issues are likely to have a material effect on the advice to the **client**, you will be asked to take this into account in the “Suitability” tabs.

Area 4. Has the firm obtained the necessary information regarding the client’s attitude to transfer risk?

- 1.34 This section captures information on the **client’s attitude to transfer risk**. The firm is required to obtain this information to comply with [COBS 9.2.2R\(2\)](#). You can find a detailed explanation of attitude to transfer risk at [paragraph 2.88](#), below which is copied here for reference:

*Attitude to transfer risk is the **client’s** behavioural and emotional response to the risks and benefits of giving up ‘guaranteed’ benefits (or **safeguarded benefits**) for those which are flexible and not guaranteed.*

*It should be ascertained by asking the **client** fair, clear and non-misleading questions about the **client’s** attitude to the features of guaranteed versus **safeguarded benefits** and their management of money such that:*

- (a) *there is a good balance of questions which can result in a spread of responses from different **client** s; and*
- (b) *the language is not biased and does not steer the **client** towards answering in a certain way.*

*Simple questions (such as asking about a **client’s** preference for control and flexibility) are less likely to provide sufficient information than questions that aim to find out why a **client** wants and/or needs certain features or how those features could be used to support intended or essential spending patterns. Questions that challenge the **client** to prioritise competing objectives can be helpful to establish what type of scheme might be best suited to meeting the **client’s** objectives and needs.*

*The assessment can also be informed by questions that challenge the **client** about whether they want to manage their own money over a long period of retirement and the extent to which they are comfortable doing so.*

*After reviewing the **client’s** responses, it should be clear whether the **client’s attitude to transfer risk** suggests that the **client** is best suited to a **safeguarded benefit** scheme or a **flexible benefit** scheme.*

- 1.35 As above, [COBS 9.2.2R\(2\)](#) requires a firm to obtain, where relevant, information such as the **client's** (a) preferences regarding risk taking and (b) risk profile.
- 1.36 From 8 June 2015 to 1 April 2018, a firm should have obtained sufficient information to enable it to consider the **client's** attitude to risk ([COBS 19.1.7G](#)).
- 1.37 From 1 April 2018, pursuant to [COBS 19.1.6G\(3\)](#) and (4)(b), the firm should obtain sufficient information to ensure that (when assessing the **client's** best interests) it is able to consider the **client's** attitude to the risk of giving up **safeguarded benefits** (or potential **safeguarded benefits**) for **flexible benefits**. From 4 October 2018, the guidance in [COBS 19.1.6G\(4\)\(b\)](#) stated that in doing so the firm should take into account the following factors (using the numbering in the guidance):
- (i) *the risks and benefits of staying in the ceding arrangement;*
 - (ii) *the risks and benefits of transferring into an arrangement with flexible benefits;*
 - (iii) *the client's attitude to certainty of income in retirement;*
 - (iv) *whether the client would be likely to access funds in an arrangement with flexible benefits in an unplanned way;*
 - (v) *the likely impact of (iv) on the sustainability of the funds over time;*
 - (vi) *the client's attitude to and experience of managing investments or paying for advice on investments so long as the funds last; and*
 - (vii) *the client's attitude to any restrictions on their ability to access funds in the ceding arrangement.*
- 1.38 The guidance copied out above, at 1.37, is also relevant when assessing the **client's** preferences and risk profile prior to 1 April 2018. This is because in order to comply with the provisions of [COBS 9.2](#), in force since November 2007, firms are required to obtain information about the **client's** knowledge, experience and investment objectives. The information about investment objectives must include information about the preferences regarding risk taking. To obtain this information, a firm was likely to have needed information about the matters set out in [COBS 19.1.6G\(4\)\(b\)\(i\)](#) to (vii) (reproduced above) which is specific to the type of transaction recommended.
- Whilst this information is not likely to have been labelled 'attitude to transfer risk' before April 2018 evidence to support the firm's assessment of whether the firm has established the client's attitude to transfer risk may be found in:
- (a) KYC records;
 - (b) Attitude to risk questionnaires that record information about the client's attitude to guaranteed income, or guarantees in general;
 - (c) File notes or other records of conversations with clients about the risks associated with transferring from a DB scheme, and how the client feels about taking these risks.

Steps to take

- 1.39 To complete this section:
- (a) record in "firm's description of the **client's attitude to transfer risk**" box how the adviser has categorised the **client** (i.e. did they have the appropriate **attitude to transfer risk** or not);
 - (b) record in "our comments" where the firm has drawn this information from (KYC, other ATR questionnaires) and any comments or observations on how the firm assessed the **client's attitude to transfer risk**.
- 1.40 If the firm has not established the **client's attitude to transfer risk**, answer "no" to this question.
- 1.41 If the firm has established the **attitude to transfer risk**, answer "yes" to this question.
- 1.42 If you have concerns that:
- (a) the firm has not undertaken the **attitude to transfer risk** assessment in a clear, fair and non-misleading way; or
 - (b) there are issues with the firm's assessment process;

you can record any concerns in the free text box provided. Reflect on and record whether these issues are likely to impact on the suitability of the firm's advice. If the issues are likely to have a material effect on the advice to the **client**, you will be asked to take this into account in the "Suitability" tabs.

Area 5. Has the firm obtained the necessary information regarding the client's knowledge and experience?

- 1.43 This section captures information relevant to the **client's** knowledge and experience. The firm is required to collect this information to comply with the **suitability requirements**.
- 1.44 The relevant **information requirements** are:
- (a) ([COBS 9.2.2R\(1\)\(c\)](#)) to obtain such information as is necessary to have a reasonable basis for believing that the **client** has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of their portfolio.
 - (b) ([COBS 9.2.3R](#)) that this information should include, to the extent appropriate to the nature of the **client**, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:
 - (i) the types of service, transaction and designated investment with which the **client** is familiar;

- (ii) the nature, volume, frequency of the **client's** transactions in designated investments and the period over which they have been carried out; and
- (iii) the level of education, profession or relevant former profession of the **client**.

1.45 From 1 April 2018, the firm should obtain sufficient information to ensure that, when assessing the **client's** best interests, it is able to consider the **client's** understanding of the risk of giving up **safeguarded benefits** for **flexible benefits** (taking into account the guidance restated in [paragraph 1.37](#) above ([COBS 19.1.6G\(4\)\(b\)](#)) and the **client's** understanding of investment risk ([COBS 19.1.6G\(4\)\(c\)](#)). This guidance is also relevant when assessing the **client's** knowledge and experience prior to 1 April 2018 for the reasons set out in paragraph 1.38.

1.46 In this section:

- (a) The "firm's assessment" box requires you to record the firm's assessment of the **client's** knowledge and experience relevant to **pension transfers** and pensions in general, in the firm's own words.
- (b) The "our comments" box can be used to capture any additional comments or observations on the firm's approach. You may find the guidance on knowledge and experience of **pension transfers** in [Section 2](#) of these instructions a useful point of reference. See in particular the list of potentially relevant factors at paragraph [2.115\(e\)](#) below.

Steps to take

1.47 If the firm does not have any records of the **client's** knowledge and experience, answer "no" to this question.

1.48 If the firm has established the **client's** knowledge and experience, answer "yes" to this question.

1.49 If you have concerns that:

- (a) the firm has not carried out the assessment of knowledge and experience in a clear, fair and non-misleading way; or
- (b) there are issues with the firm's assessment process;

you can record any concerns in the comments box provided. Reflect on and record whether these issues are likely to impact on the suitability of the firm's advice. If the issues are likely to have a material effect on the advice to the **client**, you will be asked to take this into account in the "Suitability" tabs.

1.50 Assessors should note that some firms may not explicitly assess the **client's** knowledge and experience. However, it may be possible to draw conclusions based upon the wider **information gathering**, including information as to the assets the **client** currently holds, whether they are actively managing those assets and the **client's** profession. Assessors should only answer "no" where the **information gathering** is significantly flawed and these sorts of conclusions cannot be drawn.

Area 6. Has the firm obtained the necessary information regarding the client's estimated expenditure throughout retirement?

- 1.51 This section captures information on the **client's** anticipated expenditure throughout retirement. This information is relevant to how much income the **client** will need throughout their retirement and how the **DB scheme** provides for this. The firm is required to collect this information to comply with the **suitability requirements**.
- 1.52 The relevant **information requirements** are:
- (a) [COBS 9.2.1R\(2\)\(b\)](#) requires the firm to obtain information about the **client's** financial situation. Where relevant, this must include information as to the **client's** regular financial commitments ([COBS 9.2.2R\(3\)](#)).
 - (b) From 1 April 2018, in order to assess the **client's** best interests, the firm should also obtain information as to the **client's** realistic retirement income needs ([COBS 19.1.6G\(3\)](#) and (4)(d)). To obtain the information about the client's financial situation, a firm was likely to have needed information about the matters set out in [COBS 19.1.6G\(4\)\(d\)](#) which is specific to the type of transaction recommended.

Steps to take

- 1.53 The **template** is designed to record the minimum information a firm should collect to comply with the **information requirements**. It asks you to:
- (a) identify whether the firm has taken [reasonable steps](#) to capture this information (by selecting "yes" or "no"); and
 - (b) input the relevant figures into a number of mandatory fields which relate to the **client's** current discretionary and fixed expenditure and anticipated expenditure in retirement.
- 1.54 If you cannot complete all the mandatory fields in the regular or retirement expenditure information boxes, answer "no" to this question.
- 1.55 If you can complete all the mandatory fields using information from the **client file**, answer "yes" to this question.
- 1.56 The **template** breaks expenditure down into 3 broad types:
- (a) The **basic cost of living** – This includes all non-discretionary expenditure; for example, utility bills, council tax, food and any outstanding accommodation payments (such as mortgages and rents) or care expenses if these are ongoing. This is expenditure that the **client** would find it exceptionally hard/potentially impossible to reduce.
 - (b) **Lifestyle expenditure** – This is expenditure to support the **client's** lifestyle. For example, **clients** may wish to spend money on socialising, holidays, cleaning, etc. Whilst this expenditure is not non-discretionary and, in theory, could be reduced, many **clients** may not wish to compromise on this expenditure as they see it as necessary to maintain the lifestyle they expect in retirement.

- (c) **Discretionary expenditure / savings** – This is expenditure which is purely discretionary and could easily be cut back by the **client** at any time. It may include current savings into pensions or investments which may well cease upon retirement. For **clients** still in employment, this may instead be termed “disposable income”.

1.57 You can extrapolate expenditure information from the **client file** if, for example, the firm has captured good detail on the **client’s** current level of expenditure (including both discretionary and non-discretionary expenditure) as well as sufficient detail on any liabilities the **client** has (for example how much is being repaid and when the repayment date will be) and the **client** is relatively close to retirement.

What are reasonable steps?

1.58 If the firm has estimated the **client’s** expenditure in retirement, you will need to consider whether it took reasonable steps to do so. Reasonable steps might include (by way of example only):

- (a) gathering sufficient detail on the **client’s** current level of expenditure and liabilities;
- (b) considering how the **client’s** personal circumstances and lifestyle (for example living arrangements, provision of financial support for dependents, recreational activities, travel) are likely to change upon retirement, and how this might affect future expenditure and liabilities; and
- (c) using comparative figures derived from (for example) the firm’s experience with other **clients** in similar situations, statistical averages, actuarial data and other reliable sources (though it is unlikely that the use of generic data would by itself satisfy the requirement to take reasonable steps).

Area 7. Has the firm obtained the necessary information regarding the client’s financial situation?

1.59 The firm is required to obtain information on the **client’s** assets and other sources of income and liabilities to comply with the **suitability requirements**.

1.60 The relevant **information requirements** are:

- (a) [COBS 9.2.1R\(2\)\(b\)](#) requires the firm to obtain information about the **client’s** financial situation. Where relevant, this must include information as to the source and extent of the **client’s** regular income, his assets including liquid assets, and his regular financial commitments ([COBS 9.2.2R\(3\)](#)).
- (b) From 1 April 2018, the firm should obtain information as to the **client’s** realistic retirement income needs in order to assess their best interests ([COBS 19.1.6G\(3\)](#) and (4)(d)). To obtain the information about the client’s financial situation, a firm was likely to have needed information about the matters set out in [COBS 19.1.6G\(4\)\(d\)](#) which is specific to the type of transaction recommended.

- 1.61 This information is relevant to the firm's understanding of the **client's** financial situation and the likely impact of the proposed transfer on the **client's** overall finances, their objectives, their tax position and other matters including their ability to access state benefits.

Steps to take

- 1.62 The **template** has been designed to collect the necessary information a firm should collect to comply with the **information requirements** under the broad categories of income, assets and liabilities. It asks you to:

- (a) identify whether the firm has captured the necessary information (by selecting "yes" or "no"); and
- (b) record, under each heading, any relevant information.

- 1.63 If the **client file** is incomplete or it is unclear whether the firm has collected the necessary information on the **client's** financial situation, you will need to consider whether the firm has nonetheless obtained the "necessary information" regarding the **client's** financial situation. For example:

- (a) If the "other assets" section in a fact-find is blank, and the **client** has modest income, it may be reasonable to assume that the **client** has no other assets. If this is the only piece of information missing and there is no other evidence on the **client file** to suggest the **client** has other assets, it is likely that the firm has obtained the necessary information.
- (b) If the "financial information" section in the fact-find is blank or incomplete but there is evidence on the file suggesting that the **client** has a significant amount of disposable income, it is likely that the firm has not obtained the necessary information.
- (c) If the firm has noted that the **client** has other assets or liabilities but has limited or no information on them, it is likely that the firm has not obtained the necessary information.

- 1.64 You should also consider whether the **client** has or is eligible for:

(a) **State pension benefits**

Many people have an entitlement to a state pension, which starts to pay out between the ages of 65 and 68 depending on the **client's** date of birth. Entitlement is accrued through employment (via National Insurance contributions) or a variety of credits (such as those earned by bringing up a child under the age of 12).

To understand how much state pension an individual may be entitled to and when this will be paid, **clients** can undertake a state pension forecast (via completion of a BR19 form). This is the ideal form of evidence to understand how much the **client** will be entitled to. However, it may also be possible to infer from a **client's** UK employment records how much state pension entitlement the **client** has built up. Where a **client** was a member of a contracted-out pension scheme, this may result in a reduction of the value of the state pension the **client** receives; therefore, assessors

need to exercise caution in this area. More details on the state pension can be found [here](#).

(b) **Other secured gross pension income**

The **client** may have other **DB schemes** or secured pension income (such as from an annuity). This box should be used to capture the forecast level of income those schemes or annuities in payment will provide in aggregate at the scheme retirement age. Consider what the **client's** preferences are in terms of commuting scheme pension for **PCLS**. Any other information on these schemes (for example if there are multiple schemes, different **NRDs**, etc.) should be provided in the "additional comments" box.

(c) **Gross income from non-pension assets**

This includes any non-employment income the **client** will be receiving from other sources such as investment income or rental income from buy-to-let properties. It does not cover income from the **client's** current employment.

(d) **Inheritance**

If a future inheritance is listed as an asset:

- (i) identify what the anticipated inheritance is and whether there are any guarantees attached;
- (ii) identify when the **client** anticipates they will receive the inheritance and whether there is a will in place bequeathing the asset to the **client**; and
- (ii) consider how the firm has treated the inheritance. For example, have they accounted for the fact that the asset is not guaranteed and the risk that the asset will be depleted by the time the **client** is in receipt?

(e) **Other state benefits**

This includes ill health or employment related benefits the client is receiving from the Department for Work and Pensions. Where the client is entitled to state benefits the firm should obtain information about the conditions for continued entitlement. This will enable the firm to analyse the impact of the transfer on the client's entitlement to benefits ([COBS 9.2.2R\(1\)\(b\)](#)/[COBS 19 Annex 4A 1R \(4\)\(b\) and \(8\)\(a\)](#)).

Area 8. Has the firm obtained the necessary information regarding the ceding arrangement?

- 1.65 This section captures information on the benefits that will be provided by the **client's** current **DB scheme**. This information is necessary for the firm to carry out the **transfer analysis** and to consider how the loss of scheme benefits will impact on the **client's** objectives and financial situation.
- 1.66 Information about the **client's** existing pension scheme is likely to be one of those "essential facts" about the **client**, necessary for the firm to form a view on whether a **pension transfer** is suitable ([COBS 9.2.2R\(1\)](#)).

- 1.67 The firm must collect information on benefits payable under, and other features of, the existing scheme in order to comply with the requirement to carry out a **TVA/TVAS** (until 30 September 2018 [COBS 19.1.2R](#) and [COBS 19.1.3G](#)) or an **APTA** and **TVC** (after 1 October 2018 [COBS 19.1.2BR](#) and [COBS 19.1.3AR](#)).

Steps to take

- 1.68 The **template** has been designed to collect the minimum information a firm should collect to comply with the **information requirements**. It asks you to:

- (a) identify whether the firm has captured this information (by selecting "yes" or "no"); and
- (b) record, under a number of headings, the relevant information.

- 1.69 The **template** covers three areas with several fields to be completed in each:

- (a) **number of schemes advised on** and additional comments about how the firm has treated each scheme when advising the **client** (have they bundled the advice together, or given separate **personal recommendations**);

- (i) Where the firm has advised on multiple **DB schemes** the **template** will instruct you to complete multiple templates, one for each scheme. Use the first "lead" **template** for the largest **DB scheme** advised upon. Save the lead template as a new **template** (using the "save as" function in Word) for each additional scheme, ensuring that it is updated with the relevant scheme details. You will also need to update the following sections of the Information tab:

- (A) Case details;
 - (B) Area 1 – Has the firm obtained the essential facts about the **client**?
 - (C) Area 8 – Has the firm obtained the necessary information regarding the **ceding arrangement**?
 - (D) Area 9 – Has the firm obtained necessary information regarding the **proposed arrangement**?
 - (E) Area 10 – Has the firm carried out the transfer analysis?

- (ii) In the "additional comments" box record that this is 1 of X number of **DB schemes** advised upon by the firm.

- (b) **general scheme information** (for example, sponsoring employer, **CETV**). In this section you are also asked to record any information about other scheme benefits. Use this to record information about early retirement or ill-health benefits that may be of particular value to the **client**;

- (c) **benefits at scheme NRD**. These boxes capture details of the basic benefits that the scheme will provide. The three boxes capture:

- (i) **Pension (no commutation) p.a.** – the income benefits the **client** would receive at **NRD** if they were to take all their benefits as income only.
 - (ii) **Pension (full commutation) p.a.** – the (reduced) income benefits the **client** would receive at **NRD** if they chose to maximise their **PCLS** by commuting income benefits up to the full permitted limit.
 - (iii) **PCLS** – the lump sum benefits the **client** would receive at **NRD** if they chose to maximise their **PCLS** by commuting income benefits up to the full permitted limit.
- (d) **benefits at client’s preferred retirement date.** This includes the same boxes as per for those detailed in 1.70(c)(i)-(iii) above; but also includes a box to indicate the **client** preferred age of retirement in years.
- 1.70 Firms should capture information about the **DB scheme** that is relevant to the **client’s** objectives. For example, if a **client** wants to retire or take benefits early, firms should check whether this is possible under the **DB scheme** and what the reduced benefits would be. For some **clients**, these reduced benefits would still be enough to meet their objectives. This is relevant to the assessment of suitability (addressed below).
- 1.71 If there are concerns about the scheme’s funding position, we expect the adviser to check and record details about this at the time of the advice.

Area 9. Has the firm obtained the necessary information regarding the proposed arrangement?

- 1.72 This section collects information on the **proposed arrangement**. Firms need to understand what the actual **proposed arrangement** will be when they are recommending a transfer out of a **DB scheme**, including when the **proposed arrangement** is an overseas scheme. Firms must collect this information to comply with the **information requirements**. The relevant rules are summarised below.
- 1.73 Information about the **proposed arrangement** is likely to be one of the “essential facts” about the **client** for the purposes of [COBS 9.2.2R\(1\)](#). It is also likely that the firm will have to collect information about the **proposed arrangement** in order to have a reasonable basis for believing that the transaction (a) meets the **client’s** investment objectives, (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives and (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio ([COBS 9.2.2R\(1\)](#)).
- 1.74 It will also be necessary for the firm to collect information on benefits payable under, and other features of, the **proposed arrangement** in order to comply with the requirement to carry out a **TVA/TVAS** ([COBS 19.1.2R](#) and [COBS 19.1.3G](#)) or an **APTA** and **TVC** ([COBS 19.1.2BR](#) and [COBS 19.1.3AR](#)).

Steps to take

- 1.75 The **template** has been designed to collect the minimum information a firm should collect to comply with the **information requirements**. It asks you to:

- (a) identify whether the firm has captured this information (by selecting “yes” or “no”); and
- (b) record, under a number of headings, the relevant information.

1.76 This section captures information on the **proposed arrangement** including:

- (a) whether the **proposed arrangement** will be invested in any non-mainstream pooled investments (NMPI) or unregulated collective investment schemes (UCIS);
- (b) the arrangement recommended (DIM, platform) and whether there are any initial and ongoing product costs in the **proposed arrangement**;
- (c) if the **proposed arrangement** is an overseas scheme, any commission included in the product costs;
- (d) whether there are multiple layers of organisation, levying multiple layers of charges (for example, platform and discretionary investment managers); and
- (e) whether the **client** is a self-investor. A self-investor is someone who intends to select the underlying investments themselves. In these circumstances, the firm advising on the transfer must obtain the necessary information about the **client’s** plans for their pension investments and compare the **client’s proposed arrangement** with the benefits in the **ceding arrangement**.

1.77 Where there is **two-adviser model**, the adviser recommending the transfer must compare the **ceding arrangement** with the **proposed arrangement**, even if they are not employed by the firm making the **personal recommendation** in relation to the **proposed arrangement**. It is not sufficient for the firm giving transfer advice to compare the **ceding arrangement** with a default or with generic scheme with generic charges.

1.78 The **template** asks you to collect information about whether the advice is at retirement. It asks you to record whether the firm has recommended taking income and /or capital from the **proposed arrangement**, whether there is **PCLS** taken, what the recommended withdrawal method is and the annual income to be taken in the first year. There is also a free text box to record any comments.

Area 10. Has the firm carried out the transfer analysis?

1.79 This section collects information relating to the firm’s **transfer analysis**:

- (a) prior to 1 October 2018, this took the form of a **TVA** or **TVAS**. A firm was required to carry out a **TVA/TVAS** by [COBS 19.1.2R](#).
- (b) from 1 October 2018, the applicable rules required an **APTA** and **TVC**. A firm is required to undertake an **APTA** and **TVC** by [COBS 19.1.1CR\(2\)](#).

Pre 1 October 2018 – TVA/TVAS

- 1.80 Check whether the firm was required to carry out a **TVA/TVAS**. From 8 June 2015 to 30 September 2018, [COBS 19.1.2AR](#) provided that a firm did not need to carry out a comparison (but may have chosen to do so) if:
- (a) the **client** wished to crystallise benefits immediately after the **pension transfer** or pension conversion; and
 - (b) the **client** was at normal retirement age under the rules of the **ceding arrangement**.
- 1.81 In order to complete a **TVA/TVAS**, the firm had to collect information on:
- (a) the benefits payable and options available under the **ceding arrangement** and the benefits payable and options available under the **proposed arrangement**, and the effect of replacing the former with the latter ([COBS 19.1.2R\(1\)](#) and [19.1.3G\(2\)](#)); and
 - (b) the **client's** relevant circumstances ([COBS 19.1.3G\(1\)](#)).
- 1.82 About the **TVA/TVAS**:
- (a) The **TVA/TVAS** compares the benefits to be paid under the **DB scheme** with the **proposed arrangement**.
 - (b) The main output from the **TVA/TVAS** is a series of percentages, known as "**critical yields**" (CYs). These illustrate the annual growth rate (net of charges) that the **client** would need to obtain on an investment of the **CETV** in order to replicate the benefits provided by the scheme.
 - (c) There are often multiple **CY** figures within a **TVA/TVAS**, reflecting different possible circumstances. These include:
 - (i) different CYs based on different retirement dates (for example the scheme retirement date and an early retirement date);
 - (ii) one **CY** based on the **client** taking all their benefits as pension, and a different **CY** for the scenario where the **client** commutes pension to take the maximum **PCLS**; or
 - (iii) one **CY** calculated on a joint life basis, and a different **CY** calculated on a single life basis.

Post 1 October 2018 – APTA and TVC

APTA

- 1.83 The **APTA** comprises all the analysis that is completed by the adviser in order to support the recommendation. It may be in a separate document but there is no explicit requirement in the FCA rules for the firm to provide this document to the **client**. The **APTA** assesses the benefits likely to be paid and options available under the **ceding arrangement**, and compares these with the benefits and options available under the **proposed arrangement**.
- 1.84 The **APTA** is personalised to the individual **client**. For example:

- (a) If the **client** wants to retire early, the **APTA** should assess whether the **client's DB scheme** offers early retirement and compare that option with the benefits and options in the **proposed arrangement**.
- (b) If the **client** is in ill-health, the **APTA** should assess whether the **client's DB scheme** offers ill-health early retirement options and compare that option with the benefits and options in the **proposed arrangement**. It may also be appropriate to research the availability of and benefits from an impaired life or enhanced annuity (assuming the **client** requires an income).
- (c) The **APTA** should also show whether there are ways of meeting the **client's** objectives without transferring, for example by using other schemes for bridging early retirement or taking out (decreasing) term life insurance where death benefits are prioritised.

TVC

- 1.85 The **TVC** is a chart illustrating a cash (£) figure which shows the amount of money the **client** would have to invest now, at a risk-free rate, to be able to "buy" benefits identical to those that would be provided by the **DB scheme** at the scheme's **NRD**. This can be compared to the **CETV** the **client** is being offered to help them assess the value of the offer being made.
- 1.86 To prepare a **TVC**, a firm must compare the transfer value offered by the **ceding arrangement** with the estimated value needed today to purchase the future income benefits available under the **ceding arrangement** using a pension annuity (calculated in accordance with [COBS 19 Annex 4B](#) and [COBS 19 Annex 4C](#)).
- 1.87 In order to carry out the **TVC**, the firm must also collect information on the length of time remaining before the **client** reaches the **NRD** under the **ceding arrangement** ([COBS 19 Annex 4BR\(1\)](#)).

Steps to take – all advice

- 1.88 Depending on when the advice was given:

for the TVA/TVAS:

- (a) record the relevant CYs to **NRD** and preferred retirement date within the **template** in the appropriate boxes; and
- (b) for each, identify "which basis is more relevant" by selecting the **CY** which corresponds to the **client's** intentions:
 - (i) if the evidence on file demonstrates that the **client** does not intend to take any **PCLS**, the assessor should record the **CY** for full pension and make a note in the "additional comments" box; and/or
 - (ii) if the **client** is single and there is nothing on file to suggest that this is likely to change, then insert the **CY** calculated on a single life basis and make a note in the "additional comments" box; and
- (c) record any assessment of the **CY** to match the **PPF** entitlement at **NRD**.

- (d) Record your assessment of whether the **TVA/TVAS** complied with the **requirements** in paragraph 1.81 in the “additional comments” box.

For the APTA/TVC:

- (a) record the **TVC** amount in the “TVC” box.
- (b) the difference between the **TVC** and **CETV** will be automatically calculated.
- (c) record whether an **APTA** has been completed in accordance with the instructions at paragraphs 1.83 and 1.84 in the boxes “Is the APTA personalised to the client” and “Does the APTA consider alternative ways of meeting the client’s needs and objectives”. You can record any additional comments here.

1.89 Prior to 1 October 2018 identify whether:

- (a) (with reference to the assumptions in [COBS 19.1.4R to COBS 19.1.4BR](#) and taking into account the dates these rules were in force) the analysis has been undertaken on the correct assumptions, including whether, if more cautious assumptions have been used, those assumptions are reasonable.
- (b) the analysis is consistent with product-related documents such as the **KFI**.
- (c) the analysis has been undertaken in real or monetary terms and whether the firm has consistently used this approach for personal allowances and tax bands.
- (d) the analysis has taken into account a reasonable timeframe beyond average life expectancy so that sustainability of meeting needs can be assessed.

1.90 After 1 October 2018 identify whether:

- (a) the analysis is prepared in accordance with [COBS 19 Annex 4B](#) and [COBS 19 Annex 4C](#)
- (b) the analysis is consistent with product-related documents such as the **KFI**.
- (c) the analysis has been undertaken in real or monetary terms and whether the firm has consistently used this approach for personal allowances and tax bands.
- (d) the analysis has taken into account a reasonable timeframe beyond average life expectancy so that sustainability of meeting needs can be assessed.

“Summary of information obtained” section

- 1.91 This section of the Information tab has two boxes, one for you to review and the other for you to complete:

- (a) **Tool rating:** this is the **template's** automatic rating of whether the firm has obtained the "necessary information" to make a **personal recommendation** and is based on your answers to the 10 question areas.
 - (b) **Assessor rating:** this is your own assessment of whether the firm has obtained the necessary information to make a **personal recommendation**:
 - (i) select "yes" if the firm has collected the necessary information;
 - (ii) select "no" if the firm has not collected the necessary information.
- 1.92 When considering whether the firm has the necessary information to make a **personal recommendation**, you should consider whether there are any **client** circumstances that may mean the collection of some information is not necessary for the adviser to form a view on the suitability of the transfer. This must be driven by the **client's** circumstances, not the firm's circumstances.
- 1.93 Examples of this may include:
- (a) **Client is in financial distress** – Where the **client** genuinely needs to be able to access their pension funds flexibly to pay off debt or where their house is likely to be repossessed. In this situation, it may be that the firm needs limited or no information about the **client's attitude to transfer risk**.
 - (b) **Unique scheme circumstances** – Schemes in distress may look at how they de-risk their future liability. This may result in members that do not fit the 'typical' demographic of an advice **client** (i.e. someone in their early to mid-50s and approaching retirement) needing to seek advice. In these circumstances assessors should take a pragmatic view on the **information requirements** for the case. For example:
 - (i) A scheme member in their early 20s with a short period of service is unlikely to know their planned expenditure in retirement.
 - (ii) In certain circumstances (for example, when the **CETV** is based upon the number of people transferring out of the scheme), it may not be clear what the **CETV** is until a late date. In these circumstances, an estimated **CETV** may be acceptable if appropriately caveated and the firm commits to revisit this once the actual **CETV** is known, to ensure the advice has not changed.
- 1.94 If your conclusion is that the firm has not collected the necessary information then (subject to any 'overrides' described above at paragraph 1.92 and 1.93) you should record:
- (a) a brief summary of the missing information and its significance to the suitability assessment (for example "the firm has not recorded any **client** objectives and so it cannot form a view on whether the transfer meets the **client's** investment objectives"); and

- (b) that the firm has not complied with the requirement in [COBS 9.2.1R\(2\)](#) and [COBS 9.2.6R](#) to obtain the necessary information to make a suitable **personal recommendation**; and
- (c) where the failures relate to the **transfer analysis**, that the firm has not carried out the required **transfer analysis** in accordance with:
 - (i) prior to 1 October 2018, [COBS 19.1.2R](#);
 - (ii) after 1 October 2018, any or all of:
 - (A) [COBS 19.1.1CR](#) (which requires firms to undertake the analysis);
 - (B) [COBS 19.1.2BR](#) (which sets out the steps to prepare an **APTA**); and
 - (C) [COBS 19.1.3AR](#) (which sets out the steps to carry out a **TVC**).

2 Suitability – Pension transfer

- 2.1 The suitability section contains examples which tend to show failure to comply or compliance with the **suitability requirements** for **pension transfer** advice.
- 2.2 Our **suitability requirements** for **pension transfer** advice are summarised in this section. They arise from the FCA rules.

Suitability requirements

- 2.3 After 1 October 2018 [COBS 19.1.1CR](#) requires a firm to make a **personal recommendation** when it gives advice on conversion or transfer of pension benefits. Before doing so, the firm must determine the **proposed arrangement** to which the **client** would move, carry out the **APTA** and produce the **TVC**, and take reasonable steps to ensure that the **client** understands how the key outcomes from these contribute to the **personal recommendation**.
- 2.4 From 1 November 2007 to 30 September 2018 a firm was required to make a **personal recommendation** when it gave advice on conversion or transfer of pension benefits, and before doing so to carry out a comparison in accordance with [COBS 19.1.2R](#).
- 2.5 The overarching suitability requirement, in [COBS 9.2.1R](#), is for a firm to take reasonable steps to ensure that a **personal recommendation** (which includes, in this context, a recommendation to transfer or not to transfer a pension) is suitable for its **client**.

Presumption of unsuitability

- 2.6 The starting point for **pension transfer** advice is the guidance in [COBS 19.1.6G\(2\)](#) and [COBS 19.1.6G\(3\)](#) (or, from 8 June 2015 to 1 April 2018, in [COBS 19.1.6G](#)) that a firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the **client's** best interests. These provisions indicate that if the firm cannot clearly demonstrate this, then it should assume the transaction will not be suitable.
- 2.7 The FCA guidance in [COBS 19.1.6G\(4\)](#) was issued on 1 April 2018. From this date, when a firm is assessing whether or not a transfer is in a **client's** best interests, it should take into account the following factors:
- (a) the **client's** intentions for accessing pension benefits;
 - (b) the **client's** attitude to, and understanding of the risk of giving up **safeguarded benefits** (or potential **safeguarded benefits**) for flexible benefits. From 4 October 2018, the guidance stated that in doing so the firm should take into account the following factors:
 - (i) the risks and benefits of staying in the **ceding arrangement**;
 - (ii) the risks and benefits of transferring into an arrangement with **flexible benefits**;

- (iii) the **client's** attitude to certainty of income in retirement;
 - (iv) whether the **client** would be likely to access funds in an arrangement with **flexible benefits** in an unplanned way;
 - (v) the likely impact of (iv) on the sustainability of the funds over time;
 - (vi) the **client's** attitude to and experience of managing investments or paying for advice on investments so long as the funds last; and
 - (vii) the **client's** attitude to any restrictions on their ability to access funds in the **ceding arrangement**;
- (c) the **client's** attitude to, and understanding of investment risk;
- (d) the **client's** realistic retirement income needs including:
- (i) how they can be achieved;
 - (ii) the role played by **safeguarded benefits** (or potential **safeguarded benefits**) in achieving them; and
 - (iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and
- (e) alternative ways to achieve the **client's** objectives instead of the transfer, conversion or opt-out.

Approach to assessment

2.8 For each **client file** you must:

- (a) fairly consider and give appropriate weight to all information on the **client file**; and
- (b) decide, with reference to the examples in this section of the **template**, whether it is more likely than not that the firm failed to comply with the **suitability requirements** for **pension transfer** advice.

2.9 In considering the information on the **client file**, you must not assume that a firm complied with a **suitability requirement** solely on the basis that the **client** signed documentation that records their understanding or agreement to matters set out in that documentation.

2.10 When assessing whether a firm complied with the **suitability requirements** for **pension transfer** advice you should, in broad summary, take into account the following:

- (a) the **client's** investment and retirement objectives in relation to giving up safeguarded benefits for flexible benefits;

- (b) the **client's** financial situation, including their financial ability to bear the risks associated with the transfer consistently with their investment objectives;
- (c) the **client's** ability, in light of the following, to understand the risks associated with transfer:
 - (i) the **client's** experience and knowledge (if any) relevant to **pension transfers**; and
 - (ii) the **client's** experience and knowledge (if any) of managing their own pension funds or paying for this.

2.11 When assessing the reasonableness of a firm's conduct in relation to a **personal recommendation**, you must:

- (a) assess the firm's conduct against what was reasonable at the time when the firm made the **personal recommendation**; and
- (b) determine the conduct of the firm assessed was reasonable only where that firm displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the firm.

Two-adviser model

2.12 Where the advice is given using a **two-adviser model** and the advisers are employed by different firms:

- (a) Identify which firm is responsible for the **pension transfer** advice and which firm is responsible for the **investment advice**.
- (b) Take into account that:
 - (i) it will generally be reasonable for either firm to rely on information provided to it in writing by the other firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information ([COBS 2.4.6R](#) and [COBS 2.4.8G](#)); and
 - (ii) the firm providing the advice on investments in relation to the **proposed arrangement** should ensure that (where relevant) the advice takes into account the impact of any loss of **safeguarded benefits** (or potentially **safeguarded benefits**) on the retail **client's** ability to take on investment risk ([COBS 19.1.6AG](#)).

How to complete this section

2.13 This section is divided into 4 parts:

- (a) examples of unsuitability;
- (b) suggested **template** rating;

- (c) assessor's suitability rating; and
- (d) assessor's rationale and evidence supporting suitability rating.

*Filling in the **suitability requirements** section*

2.14 The "Suitability Assessment – pension transfer" tab is used to record your assessment of whether the firm complied with the applicable **suitability requirements**.

2.15 To complete this tab you must take the following steps:

- (a) review the information on the consumer file and the information recorded in the data section of the **template** ("the available evidence");
- (b) determine whether the available evidence shows overall that any or all of **examples (1) to (12)** are present or not;
- (c) indicate whether any or all of **examples (1) to (12)** are present or not, by selecting "yes" or "no";
- (d) determine, taking into account the available evidence, whether the firm complied with the **suitability requirements**; and
- (e) insert your commentary on whether or not the firm complied with the **suitability requirements**, with reference to the example(s) that support your conclusion.

2.16 If an example is present, this will tend to indicate the firm's compliance or non-compliance with the **suitability requirements**. The presence of an example is not definitive as to whether a firm has complied with the **suitability requirements**. There may be other factors which mean that the firm has, despite the presence of the example, complied, or not complied, with the **suitability requirements**.

In the event that the advice was to remain, but you conclude that the client should have transferred the **template** should be filled out differently. Examples 1 to 11 should not be answered (so the template "yes/no" boxes will remain purple) and example 12 should be answered "yes".

2.17 The **template** advice rating will automatically default to "compliant" or "non-compliant" depending on your answer to the example questions in the **template**. The "non-compliant" rating indicates that the **personal recommendation** does not comply with the **suitability requirements**.

If you have proceeded to assess suitability despite the fact that the firm has not complied with the information requirements (where the file was rated "non compliant proceed to suitability") there is additional guidance at the end of this section about how to rate these cases.

2.18 The following sections contain guidance for determining whether the available evidence shows overall that any of the examples below are present:

Example	
1	The client is, or will be, reliant on income from this scheme
2	The aim of the transfer is to maximise death benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.
3	The aim of the transfer is to access flexible benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.
4	The aim of the transfer is to maximise the PCLS , or to take it early, but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.
5	The aim of the transfer is to protect the client's pension fund but the scheme is not at risk or the PPF would provide an adequate level of protection.
6	The client wants to retire early but can meet their objective(s) while remaining in the scheme
7	The client wants guaranteed income or returns
8	The client does not have the necessary attitude to transfer risk
9	The firm's transfer analysis does not support a recommendation to transfer
10	The firm does not have a reasonable basis for believing that the client has the necessary knowledge and experience to understand the risks involved in transferring their DB scheme
11	The recommendation to transfer is unsuitable for the client's investment objectives or financial situation for some other reason
12	The adviser recommended that the client retains the benefits within the scheme when a transfer appears to be suitable and in the client's best interests

Example 1: The client is, or will be, reliant on income from this scheme

2.19 This example relates to [COBS 9.2.1R\(1\)\(a\)](#), the overarching requirement to take reasonable steps to ensure that a **personal recommendation** is suitable for the **client**, and [COBS 9.2.2R\(1\)](#), which includes a requirement for the firm to obtain such information as is necessary to have a reasonable basis for believing that the recommended course:

- (a) meets the **client's** investment objectives; and

(b) is such that the **client** is able financially to bear any related investment risks consistent with their objectives.

2.20 In order to comply with the provisions of COBS 9.2.1R, as set out above, firms are required to obtain information about the client's financial situation ([COBS 9.2.2R\(1\)\(b\)](#) and (3)). The information about the client's financial situation must include information about the source and extent of their regular income. The FCA guidance in [COBS 19.1.6G\(4\)\(d\)](#), issued on 1 April 2018, makes clear that, when considering whether a transfer is in the **client's** best interests, the firm should take into account the **client's** realistic retirement income needs, including (using the numbering in this section):

(i) *how they can be achieved;*

(ii) *the role played by safeguarded benefits (or potential safeguarded benefits) in achieving them; and*

(iii) *the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs.*

To obtain this information, a firm was likely to have needed information about the matters set out in [COBS 19.1.6G\(4\)\(d\)](#) which is specific to the type of transaction recommended.

2.21 A **DB scheme** provides a 'guaranteed' level of retirement income. If a **client** leaves a **DB scheme**, they will have to buy an annuity to obtain a guaranteed level of income. Alternatively, they may rely on income from investments, but investments will have to be managed in such a way as to produce ongoing income; and even then there is no guarantee as to the amount or duration of that income.

2.22 The **client** is reliant on income from the **DB scheme** in retirement if they do not have the capacity to lose it – for example because without it they would be unable to meet non-discretionary expenditure. In those circumstances, absent a suitable alternative that will provide sufficient guaranteed income to meet their needs, or evidence that the **client** could achieve their income objectives in retirement without a guaranteed income (for example because the **client** has a very short life expectancy), they should generally be advised to remain in the **DB scheme**.

The client may not be reliant on income from the scheme if they can produce the same income via a suitable alternative, with or without a guarantee, and this income is able to meet their needs throughout retirement. For example, if the recommendation is to transfer to a personal pension and the cash flow modelling (in real terms) evidences that with a sustainable withdrawal rate the client will not run out of money in retirement, allowing for beyond average life expectancy and stress testing of returns.

Steps to take

2.23 Take the following steps:

(a) Identify whether a **client** has a need for income from their **DB scheme**. This may be reflected in the information on the **client file** or (post October 2018) in the **APTA** about:

(i) the **client's** anticipated household income throughout retirement; and

- (ii) the **client's** anticipated household expenses and personal outlays throughout retirement.

See also the information captured in areas 6 and 7 of the Information Tab and the guidance on where you can extrapolate information from the client file at [paragraph 1.57](#) (expenditure) and [paragraph 1.63](#) (income).

- (b) Identify whether the income from this scheme is necessary for household expenses and personal outlays or whether it is "disposable income" (which is money left over after bills and household expenses are paid – see [paragraph 1.56\(c\)](#) above).
- (c) Assess the **client's** anticipated household income throughout retirement, taking into account all of the **client's** sources of income throughout retirement including:
 - (i) savings and investments;
 - (ii) other pension schemes with safeguarded benefits;
 - (iii) contribution-based pension schemes, including the **proposed arrangement**, taking into account the impact of the following factors on the sustainability of these schemes:
 - (A) the frequency of withdrawals (ad hoc or regular payments);
 - (B) the timing of withdrawals (monthly, yearly);
 - (C) the amount of the withdrawals; and
 - (D) investment performance.
 - (iv) (if the **client** is eligible) state pension. Guidance on eligibility is given above at paragraph 1.68(a) above. State pension typically commences between ages 65 and 68 depending upon the **client's** date of birth; and
 - (v) (if the **client** is managing income on a joint basis) the spouse's/partner's other assets, pensions and entitlement to the state pension and how this contributes to their household income.
- (d) Assess the **client's** anticipated expenses and personal outlays throughout retirement, taking into account:
 - (i) any forecast expenditure plans that the adviser has identified with the **client**;
 - (ii) any intention of early retirement;
 - (iii) any existing liabilities that the **client** continues to pay off (for example their mortgage) and their plans for clearing these debts;

- (iii) whether the forecast expenditure appears reasonable in light of their current expenditure patterns and plans to pay off liabilities; and
 - (iv) where the firm has not collected a forecast expenditure plan, your estimate (if possible) of the **client's** likely expenditure patterns based on the information on file.
- (e) Identify whether the **client** wishes to retire early. Where this is the case, consider whether the **client** can afford to retire early or whether this will give rise to a risk of the **client** running out of income in retirement.

2.24 In summary:

- (a) This example is present when a **client** needs a minimum level of income from their **DB scheme** throughout retirement (for example, to pay household bills and expenses).
- (b) This example is not present when a **client** does not need a specific level of income from the **DB scheme** (for example, because it is not essential to maintain their standard of living).

Example 2: The aim of the transfer is to maximise death benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests

2.25 This example relates to [COBS 9.2.1R\(1\) and 9.2.2R\(1\)](#), and the guidance stating that a firm should only consider a transfer to be suitable where it can clearly demonstrate, on contemporary evidence, that it is in the **client's** best interests. The guidance relating to the **client's** best interests is at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G](#) (3) and (4).

2.26 From 1 April 2018, when assessing the **client's** best interests, the firm should consider:

- (a) the **client's** realistic retirement income needs: [COBS 19.1.6G\(4\)\(d\)](#). This includes the impact of a transfer on those needs, including any trade-offs.
- (b) whether there are alternative ways of achieving the **client's** objectives ([COBS 19.1.6G\(4\)\(e\)](#)).

2.27 The primary purpose of a pension is to meet the income needs of an individual when they cease to receive earned income in retirement. Where maximising the **client's** death benefits is treated as a high priority, there is an increased risk that the **client** will not be able to meet their income needs throughout retirement. Where a transfer is recommended to maximise death benefits we would expect to see evidence that the **client** is willing to accept the risk that they may run out of money in retirement in order to achieve this objective.

2.28 In certain circumstances, the death benefits under a **DB scheme** may not be ideal for a particular **client's** circumstances, for example because the **client** has an unmarried partner who would not be eligible for benefits under the **DB scheme** following the **client's** death; or because the reduced benefits payable to a surviving

spouse or partner under the **DB scheme** would be less valuable than a lump sum payment.

2.29 However, transferring out of a **DB scheme** in order to maximise death benefits may have a negative impact on the **client's** ability to meet retirement income needs. There may therefore be a trade-off between (a) maximising death benefits and (b) maximising retirement income.

2.30 The firm will have to weigh these competing concerns in order to determine what is in the **client's** best interests. Where for example the **client** has a normal life expectancy and is likely to exhaust their pension savings before they can pass them on, this will point against the transfer being suitable. Equally, where there are other ways of providing for surviving family members without the **client** leaving the **DB scheme**, this will tend to indicate that the transfer is unsuitable.

Steps to take

2.31 Take the following steps where the aim of the transfer is to maximise death benefits:

- (a) refer to the information on the **client file** and/or (post October 2018) in the **APTA**, and the information recorded on the **client's** objectives and financial situation in the **template**;
- (b) refer to the rules of the **ceding arrangement** (if available; alternatively, the firm's description of entitlements under the **ceding arrangement**) and identify what death benefits are available, and the conditions for their payment;
- (c) identify whether there is an alternative way to meet the **client's** death benefit objective without giving up scheme benefits; and
- (d) consider whether the recommendation to transfer to access death benefits is suitable for the **client's** investment objectives and financial situation.

2.32 The **client's** circumstances may suggest that they are willing to forego income throughout retirement to maximise death benefits; for example, where the **client**:

- (a) is in ill-health (and any ill-health early retirement provisions in the **ceding arrangement** do not apply) or has a family history of premature death;
- (b) has no spouse but has children or other dependents who may not be provided for under the **DB scheme**;
- (c) needs to be able to access their pension savings flexibly to manage different sources of income prior to and throughout retirement;
- (d) has significant other assets so the income derived from this scheme does not make up a significant proportion of their retirement provision; or
- (e) has income needs that are significantly lower than the income provided by the **DB scheme**.

2.33 There may be an alternative way to meet the **client's** death benefit objective without giving up the scheme benefits. For example:

- (a) should the **client** have purchased life assurance, such as a decreasing term assurance, to secure death benefits?
- (b) does the **client** have any personal pension or workplace pension schemes which could provide the desired level of death benefits?

2.34 This example is present when:

- (a) the **client** is not willing to forego scheme benefits and guarantees to achieve their objective;
- (b) a lower-risk suitable alternative is available to achieve their objective; and/or
- (c) it is likely that the **client** will exhaust their pension savings during their lifetime (having regard to how the **client** will access their pension savings and the factors listed at [paragraph 2.23\(d\)](#) above).

Example 3: The aim of the transfer is to access flexible benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests

2.35 This example relates to [COBS 9.2.1R\(1\)](#) and [9.2.2R\(1\)](#), and the guidance that a firm should only consider a transfer to be suitable where it can clearly demonstrate, on contemporary evidence, that it is in the **client's** best interests. The guidance relating to the **client's** best interests is, prior to 1 April 2018 at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G\(3\) and \(4\)](#).

2.36 As required by [COBS 9.2.1R\(2\)\(c\)](#) and explained in the guidance at [COBS 19.1.6G\(4\)\(a\)](#), which was issued on 1 April 2018, to give suitable advice a firm must obtain the necessary information about the **client's** investment objectives, which in the case of a **pension transfer** include (in the FCA's view) their intentions for accessing pension benefits.

2.37 To determine whether the transfer is suitable, the guidance issued on 1 April 2018 states that the firm should take into account the following factors among others:

- (a) the **client's** realistic retirement income needs: [COBS 19.1.6G\(4\)\(d\)](#);
- (b) whether there are alternative ways of achieving the **client's** objectives: [COBS 19.1.6G\(4\)\(e\)](#);
- (c) whether the **client** would be likely to access funds in a scheme with flexible benefits in an unplanned way, and how this might impact on the sustainability of the funds over time [COBS 19.1.6G\(4\)\(b\)\(iv\) and \(v\)](#); and
- (d) the **client's** attitude to and experience of managing investments or paying for advice on investments so long as the funds last: [COBS 19.1.6G\(4\)\(b\)\(vi\)](#).

2.38 The major advantage of a **DB scheme** is that it should provide a 'guaranteed' income for the rest of the **client's** life. By contrast, a **DC scheme** enables the **client** to make their own decisions as to when and how to withdraw funds from their pension, but with the major disadvantage that income is not guaranteed.

2.39 There are rational reasons for a **client** to wish to access the more **flexible benefits** of a **DC scheme**. For example, the **client** may wish to minimise tax liabilities on income from their pension scheme, or to manage their own funds (or appoint a separate manager) so as to benefit from favourable investment returns.

2.40 However, this is unlikely to be in the **client's** best interests where (for example) the **client** is likely to exhaust their pension savings during their lifetime, whether because of forecast expenditure, unplanned withdrawals of funds or inadequate management of investments; or where there is an alternative way of achieving the **client's** particular objective without transferring out of the **DB scheme**.

About flexible benefits

2.41 Refer to the guidance on **DB schemes** and **DC schemes** as described on the FCA's website at <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit>. In general, **DB schemes** provide a secure, known income for the life of the **client**.

2.42 **DC schemes** enable **clients** to make decisions about when and how they want to withdraw money from their pension scheme. Income is not guaranteed and is dependent on the performance of the **client's** pension investments.

2.43 **DB schemes** may contain some flexibility, for example in relation to when benefits are taken. You will have to consider what the scheme rules enable the **client** to do with their funds in retirement. It may be that the **client** can take benefits from their **DB scheme** in a way that meets their needs and objectives, using this flexibility.

Steps to take

2.44 Take the following steps where the aim of the transfer is to access flexible benefits:

- (a) refer to the information on the **client file** and/or (post October 2018) in the **APTA**, and the information recorded on the **client's** objectives and financial situation in the **template**;
- (b) identify why the **client** wants access to **flexible benefits** and whether they understand the features of a scheme with **flexible benefits**;
- (c) identify whether any alternatives are available to meet the **client's** objective; and
- (d) consider whether the recommendation to transfer to access **flexible benefits** is suitable for the **client's** investment objectives and financial situation.

2.45 The **client's** circumstances may suggest that they are willing to forego income throughout retirement to access **flexible benefits**. For example, where the **client**:

- (a) has no need for income from this scheme; and/or
- (b) is transferring to minimise the tax they pay on income from their **DB scheme**.

2.46 This example is present when:

- (a) the **client** is not able to forego scheme benefits and guarantees to achieve their objective;
- (b) there is an alternative way to meet the **client's** desire for flexible benefits without giving up scheme benefits; and/or
- (c) it is likely that the **client** will exhaust their pension savings during their lifetime (having regard to how the **client** will access their pension savings and the factors listed at [paragraph 2.23\(d\)](#) above).

Example 4: The aim of the transfer is to maximise the PCLS or to take it early, but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests

- 2.47 This example relates to [COBS 9.2.1R\(1\)](#) and [9.2.2R\(1\)](#), and the guidance stating that a firm should only consider a transfer to be suitable where it can clearly demonstrate, on contemporary evidence, that it is in the **client's** best interests. The guidance relating to the **client's** best interests is, prior to 1 April 2018 at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G\(3\) and \(4\)](#).
- 2.48 As required by [COBS 9.2.1R\(2\)\(c\)](#) and explained in the guidance at [COBS 19.1.6G\(4\)\(a\)](#), which was issued on 1 April 2018, to give suitable advice a firm must obtain the necessary information about the **client's** investment objectives, which in the case of a **pension transfer** include (in the FCA's view) their intentions for accessing pension benefits.
- 2.49 The FCA guidance issued on 1 April 2018 also makes clear that, when considering whether a transfer is in the **client's** best interests, the firm should also take into account among other matters:
- (a) the **client's** realistic retirement income needs: [COBS 19.1.6G\(4\)\(d\)](#). This includes the impact of a transfer on those needs, including any trade-offs; and
 - (b) whether there are alternative ways of achieving the **client's** objectives ([COBS 19.1.6G\(4\)\(e\)](#)).
- 2.50 The firm should identify the reason the **client** wishes to take or maximise the **PCLS** and consider carefully whether it would be possible to meet the **client's** objectives either:
- (a) by taking advantage of any relevant **PCLS** provision in the **DB scheme** itself (for example by commuting income benefits) or
 - (b) by some alternative means, for example by meeting the liability from some other source of funds.

If (a) or (b) is possible, the transfer is unlikely to be in the **client's** best interests, as there will be an alternative way of meeting the **client's** objectives.

- 2.51 The firm should also consider the rationality of the objective itself. For example, if the objective is to satisfy a liability such as a mortgage, does the liability have to be satisfied immediately, such that a lump sum is required? If it could instead be

paid from ongoing income, this may suggest that the transfer is not in the **client's** best interests, as the objective could be met in alternative way.

- 2.52 If the **client** transfers to a **DC scheme**, the **PCLS** will come out of the funds available to generate an income. This may leave the **client** unable to meet their realistic retirement income needs. In such circumstances, the transfer is unlikely to be suitable.

About the PCLS

- 2.53 For **DB schemes**, a **PCLS** is usually obtained by giving up other benefits. This is typically done by commuting (giving up) income benefits in favour of lump sum benefits. However, in some **DB schemes**, the amount of **PCLS** will be specified in addition to the level of income available from the scheme. A separate calculation is required to calculate the amount of available **PCLS**. The nature of this calculation means that, typically, the **PCLS** that **clients** are able to access is likely to be lower under the **DB scheme** than it would be if they transferred to a **DC scheme**.
- 2.54 For **DC schemes**, the amount of **PCLS** is limited, typically to 25% of the fund value. For **DC schemes**, the **PCLS** comes out of the fund value, thus reducing the funds available to provide an income.
- 2.55 You should consider whether the **client** needs to access a larger **PCLS** than is available from the **DB scheme**, and whether it is in their best interests to forego **DB scheme** benefits, particularly including the 'guaranteed' income, in order to take the higher **PCLS**.
- 2.56 When accessing benefits from a **DB scheme**, typically **clients** must take all the benefits at the same time. For example, it is not typically possible to only withdraw the **PCLS** and defer taking an income to a later date, or vice versa.

Steps to take

- 2.57 Where a **client** wants to access scheme benefits early to take a lump sum payment:
- (a) Identify from the **client file** and/or (post October 2018) the **APTA** why the **client** wants to access the lump sum.
 - (b) Determine whether the **client** could have drawn the desired lump sum benefits from the scheme.
 - (c) Determine whether the **client** could have used other assets to create a lump sum without transferring the pension. For example:
 - (i) other **DC**/money purchase pensions; or
 - (ii) other assets (non-pension assets, savings or investments).
- 2.58 Where a **client** wishes to maximise the size of their **PCLS**:
- (a) identify whether the **client** needs access to an increased lump sum; and
 - (b) identify the impact this may have on the level of other income benefits the **client** may obtain from the pension.

2.59 This example is present when:

- (a) the **client** is not willing to forego scheme benefits and guarantees to achieve their objective;
- (b) a lower-risk suitable alternative is available to achieve their objective; and/or
- (c) it is likely that the **client** will exhaust their pension savings during their lifetime (having regard to how the **client** will access their pension savings and the factors listed at paragraph 2.23(d) above).

Example 5: The aim of the transfer is to protect the client's pension fund but the scheme is not at risk or the PPF would provide an adequate level of protection.

2.60 This example relates to [COBS 9.2.1R\(1\)](#) and [9.2.2R\(1\)](#), and the guidance stating that a firm should only consider a transfer to be suitable where it can clearly demonstrate, on contemporary evidence, that it is in the **client's** best interests. The guidance relating to the **client's** best interests is, prior to 1 April 2018 at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G\(3\) and \(4\)](#).

2.61 Where a **client** seeks to transfer out of a **DB scheme** because of concerns about the financial stability of the scheme or their employer, the firm should consider whether those concerns are legitimate. If it is clear that they are not, then the risks of giving up the 'guaranteed' income in the **DB scheme** are likely to outweigh the risks of the scheme failing, and the transfer is unlikely to be in the **client's** best interests. This will be a question of balance in each individual case.

2.62 As required by [COBS 9.2.1R\(2\)\(c\)](#) and explained in the guidance at [COBS 19.1.6G\(4\)\(a\)](#), which was issued on 1 April 2018, to give suitable advice a firm must obtain the necessary information about the **client's** investment objectives, which in the case of a **pension transfer** include (in the FCA's view) their intentions for accessing pension benefits.

2.63 The following FCA guidance issued on 1 April 2018 is also relevant:

- (a) [COBS 19.1.6G\(4\)\(b\)](#), which states that the firm should consider the **client's** attitude to and understanding of the risk of giving up safeguarded benefits;
- (b) [COBS 19.1.6G\(4\)\(d\)](#), which makes clear that, when considering whether a transfer is in the **client's** best interests, the firm should take into account the **client's** realistic retirement income needs; and
- (c) [COBS 19.1.6G\(4\)\(e\)](#), which states that a firm should consider whether there are alternative ways of achieving the **client's** objectives.

2.64 Where a **client** seeks to transfer out of a **DB scheme** because of concerns about the financial stability of the scheme or their employer, the firm should consider whether those concerns are legitimate. If it is clear they are not, then the risks of giving up the guaranteed income in the **DB scheme** are likely to outweigh the risks of the scheme failing, and the transfer is unlikely to be in the **client's** best interests. This will be a question of balance in each individual case.

- 2.65 In addition, the firm should consider whether, if the **client's DB scheme** enters the **PPF**, the **PPF** would provide sufficient compensation to meet the **client's** realistic retirement income needs. If so, then it is probable that the **PPF** would provide an adequate alternative way of meeting the **client's** objective of protecting their retirement income; and therefore that the transfer would not be suitable.

About the PPF (updated September 2020)

- 2.66 The **PPF's** entry rules set out which kinds of **DB schemes** are eligible for **PPF** entry. Broadly this excludes schemes that started winding up before 6 April 2005, have fewer than 12 members (if they are all trustees), have a crown guarantee, are not registered pension schemes or do not have their main place of administration registered in the UK. Schemes may also be ineligible if the trustees have compromised an employer debt that was due under section 75 of the Pensions Act 1995. There are also detailed rules regarding the eligibility criteria for multi-employer pension schemes.
- 2.67 Prior to **PPF** entry there is a detailed assessment period, of at least a year, to determine whether a scheme is eligible to enter the **PPF**.
- 2.68 The **PPF** will assume responsibility for an eligible scheme if, broadly, the sponsoring employer suffers an qualifying insolvency event under **PPF** rules, the scheme cannot be rescued and does not have enough assets to secure **PPF** compensation levels. Once the **PPF** has assumed responsibility, the trustees of the scheme are discharged and the **PPF** takes over the scheme's liabilities.
- 2.69 If a scheme enters the **PPF** then, as set out below, the compensation that will be paid out to scheme members will depend on whether the member is an active, deferred or pensioner scheme member; whether the member is above or below normal pension age as at the **PPF** assessment date; and the benefits payable to members under the admissible rules of the scheme. The following is a broad summary of the position:
- (a) The full amount of pensions in payment to members above normal pension age at the start of the assessment period will be paid. In other words, assuming that a scheme has a normal pension age of 65, members who are above this age and receiving their pensions will receive their full basic pension.
 - (b) 90% of a member's pension will be paid if they are under normal pension age at the start of the assessment period, subject to the compensation cap.
 - (c) 90% of a member's entitlement will be paid if they are an active or deferred member (and under normal pension age) before the insolvency of their employer. Again, this is subject to the compensation cap.
 - (d) For instance the compensation cap for the 2019/20 levy year was set at £40,020 per annum, so the cap for a member under normal pension age at the start of the assessment period is £36,018 (90%) per annum. The amount of the cap is also adjusted according to the member's age.
- 2.70 For **clients** who require a guaranteed income in retirement, receiving benefits from the **PPF** may be the right outcome.

- 2.71 Be aware that compensation paid by the **PPF** may be subject to different rates of escalation and there may be different benefits for dependents on the death of the **client**. This may mean the value of what the **client** receives over their lifetime is in practice less than 90% of what they would have received from the scheme.

Steps to take

- 2.72 To determine whether, at the time of the advice, the scheme was at risk of entering the **PPF**:
- (a) Check whether the scheme was in a **PPF** assessment period at <https://www.ppf.co.uk/schemes/index>. It is not typically possible for individuals to transfer out of **DB schemes** that have entered a PPF assessment period.
 - (b) Consider whether there is in any verifiable information in the public domain which suggests the sponsoring firm was in financial difficulty.
- 2.73 If the scheme was at risk of entering the **PPF**, identify whether the **PPF** would have provided an adequate level of protection. To do this:
- (a) identify the **client's** income needs in retirement;
 - (b) consider the level of benefits the **client** would be likely to receive from the PPF, having regard to the income cap; and
 - (c) consider whether the level of benefits from the PPF would meet the **client's** income needs in retirement.
- 2.74 This example is present when the client's objective was to protect their pension fund but:
- (a) at the time of the advice, the scheme was not at risk; or
 - (b) the impact of the **PPF** reductions is less than the impact of charges in a **flexible benefits** arrangement; or
 - (c) if there is evidence that the scheme was at risk, the **PPF** would nonetheless have provided an adequate level of protection for the **client's** pension savings.
- 2.75 You will be asked to consider how the firm has provided information about the scheme and its funding position in the 'knowledge and experience' example, below at [Example 10](#).
- 2.76 When you consider the case in the round, the **client's** circumstances may suggest that they are willing to accept the loss of scheme benefits and guarantees to protect their pension fund, for example, where there are genuine concerns about the scheme's funding position and a **client** is expecting to receive an income in excess of the PPF compensation cap (check what the cap is for the relevant year at <https://www.ppf.co.uk/compensation-cap-factors>).

Example 6: The client wants to retire early but can meet their objective(s) while remaining in the scheme

- 2.77 This example relates to [COBS 9.2.1R\(1\)](#) and [9.2.2R\(1\)](#), and the guidance stating that a firm should only consider a transfer to be suitable where it can clearly demonstrate, on contemporary evidence, that it is in the **client's** best interests. The guidance relating to the **client's** best interests is, prior to 1 April 2018 at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G\(3\) and \(4\)](#).
- 2.78 The FCA guidance issued on 1 April 2018 also makes clear that, when considering whether a transfer is in the **client's** best interests, the firm should also take into account whether there are alternative ways of achieving the **client's** objectives: [COBS 19.1.6G\(4\)\(e\)](#). Preserving the **client's** benefits until the scheme **NRD** is reached allows those benefits to be accessed without incurring an early retirement penalty. The firm should demonstrate why, despite the loss of benefits, the recommendation to transfer is nonetheless justified.
- 2.79 The firm should ascertain the rules and provisions of the **client's DB scheme** relating to early retirement. It may be possible for the **client** to retire early without leaving the **DB scheme**, in which case there would be an alternative way to achieve the **client's** objectives and the transfer would probably not be in the **client's** best interests. It may also be possible for a member to draw an early retirement pension without a reduction for drawing it early (for example in the case of an ill-health early retirement pension), in which case this benefit should be clearly brought to the attention of the **client** by the advising firm and the transfer would probably not be in the **client's** best interests.
- 2.80 Some individuals may have a 'protected retirement age' within their **DB scheme**. This means that they may be able to retire earlier than the normal minimum pension age of 55. A **client's** protected retirement age is typically lost if they transfer away from the scheme, unless the transfer forms part of a 'block transfer'. A block transfer is a transfer, in a single transaction, of all the member's benefits out of the scheme alongside at least one other member of that pension scheme. Furthermore, the member must not have been a member of the **proposed arrangement** before the transfer.

Steps to take

- 2.81 Where a **client** wants to retire early, take the following steps:
- (a) Identify from the **client file** and/or (post October 2018) the **APTA** whether the **ceding arrangement** has an early retirement option, and what the conditions for early retirement are, including early retirement factors that are likely to reduce the amount of benefits paid.
 - (b) Identify whether the **client** has a protected retirement age as part of the **ceding arrangement**.
 - (c) Identify whether the **client** has alternative sources of income or assets which could enable them to retire early such as:
 - (i) other pensions (DB or DC);
 - (ii) income from part time work; and
 - (iii) savings, investments or other assets.

- (d) Consider whether capital in other assets, or income from part-time work, could be used to defer drawing down early from the **DB scheme**. For example, the **client** may be able to draw flexible lump sums from another pension to meet their income requirements until they reach the **NRD** with this scheme, or the client could use part-time income to bridge the gap.
- (e) Answer “yes” if the **client** could have used these sources of income or other assets to meet their early retirement objective.

Example 7: The client wants guaranteed income or returns

About this example

- 2.82 This example relates to whether the recommendation meets the **client’s** objectives and whether the transfer is the most suitable way for the **client** to achieve their objectives. If a transfer does not meet the **client’s** objectives, the **personal recommendation** is highly unlikely to be suitable. It relates to [COBS 9.2.1R\(1\)\(a\)](#), the overarching requirement to take reasonable steps to ensure that a **personal recommendation** is suitable for the **client**, and [COBS 9.2.2R\(1\)](#), which includes a requirement for the firm to obtain such information as is necessary to have a reasonable basis for believing that the recommended course (a) meets the **client’s** investment objectives; and (b) is such that the **client** is able financially to bear any related investment risks consistent with their objectives.
- 2.83 This example is similar to **Example 1**. The key difference is that, with this example, the **client** specifically wants guaranteed income or returns (as opposed to being reliant on the guaranteed income). Advising the **client** to transfer out of a **DB scheme** will therefore not meet the **client’s** objectives (per [COBS 9.2.2R\(1\)\(a\)](#)) and is likely to be unsuitable, unless the **client** is purchasing an annuity.
- 2.84 Where the **client** is purchasing an annuity, regard will have to be had to the **client’s** realistic retirement income needs (the guidance issued from 1 April 2018 at [COBS 19.1.6G\(4\)\(d\)](#) is relevant) and whether the guaranteed income generated by the annuity will be sufficient to meet these needs. If it will not be sufficient, the transfer is unlikely to be in the **client’s** best interests. Prior to 1 April 2018 the guidance relating to the **client’s** best interests is at [COBS 19.1.6G](#) or from 1 April 2018 at [COBS 19.1.6G\(3\) and \(4\)](#).

Steps to take

- 2.85 Take the following steps:
 - (a) Refer to the information on the **client file** and/or (post October 2018) in the **APTA**, the **information gathering** and the information recorded on the **client’s** investment objectives in the **template**. Identify whether the **client** wants guaranteed income or returns.
 - (b) Consider whether the recommendation to transfer met the **client’s** objective for guaranteed income or returns. A transfer may meet these objectives if:
 - (i) the **client** is investing in a product that guarantees income, such as an annuity; or

- (ii) the recommendation takes into account the **client's** desire for a guarantee and puts in place a sustainable strategy to achieve this end.
- (c) This example is present where the **client** has indicated a preference for guaranteed income or returns throughout retirement and the **client** has not been transferred into a product that meets these needs.

Example 8: The client does not have the necessary attitude to transfer risk

2.86 This example relates to [COBS 9.2.1R\(1\)\(a\)](#) and [9.2.2R\(1\)](#), including in particular the requirements in:

- (a) [COBS 9.2.2R\(1\)\(c\)](#) for a firm to obtain such information as is necessary to have a reasonable basis for believing that the **client** has the necessary experience and knowledge in order to understand the risks involved in the transaction.
- (b) [COBS 9.2.2R\(1\)\(a\)](#) and [\(2\)](#) for the firm to obtain such information as is necessary to have a reasonable basis for believing that the transaction meets the **client's** investment objectives, which include (where relevant) the **client's** preferences regarding risk taking and their risk profile.

2.87 The guidance in [COBS 19.1](#) is also relevant. Prior to 1 April 2018 [COBS 19.1.7G](#) stated that a firm advising a **client** on a **pension transfer** or pension opt-out (or, from 8 June 2015, a pension conversion) should consider the **client's** attitude to risk in relation to (where relevant) the rate of investment growth that would have to be achieved to replicate the benefits being given up. From 1 April 2018 [COBS 19.1.6G\(4\)\(b\)](#) explained that to assess suitability the firm should take into account the **client's** attitude to, and understanding of, the risk of giving up **safeguarded benefits** in favour of **flexible benefits**. From 4 October 2018, [COBS 19.1.6G\(4\)\(b\)](#) guidance stated that in doing so the firm should take into account the following factors (using the numbering in this section):

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

About Attitude to Transfer Risk and how it is assessed

- 2.88 **Attitude to transfer risk** is the **client's** behavioural and emotional response to the risks and benefits of giving up 'guaranteed' benefits (or **safeguarded benefits**) for those which are flexible and not guaranteed.
- 2.89 It should be ascertained by asking the **client** fair, clear and non-misleading questions about the **client's** attitude to the features of **flexible benefits** versus **safeguarded benefits** and their management of money such that:
- (a) there is a good balance of questions which can result in a spread of responses from different **clients**; and
 - (b) the language is not biased and does not steer the **client** towards answering in a certain way.
- 2.90 Simple questions (such as asking about a **client's** preference for control and flexibility) are less likely to provide sufficient information than questions that aim to find out why a **client** wants and/or needs certain features or how those features could be used to support intended or essential spending patterns. Questions that challenge the **client** to prioritise competing objectives can be helpful to establish what type of scheme might be best suited to meeting the **client's** objectives and needs.
- 2.91 The assessment can also be informed by questions that challenge the **client** about whether they want to manage their own money over a long period of retirement and the extent to which they are comfortable doing so.
- 2.92 After reviewing the **client's** responses, it should be clear whether the **client's attitude to transfer risk** suggests that the **client** is best suited to a **safeguarded benefit** scheme or a **flexible benefit** scheme.

Steps to take

- 2.93 Take the following steps.

Compare:

- (a) the **client's attitude to transfer risk**, focusing on the **client's** attitude to:
 - (i) **safeguarded benefits** or guarantees;
 - (ii) **flexible benefits** or the ability to control how and when they withdraw money from their pension savings;
 - (iii) managing their investments or paying for someone to manage their investments on their behalf; and
 - (iv) the long-term sustainability of their fund;

with

- (b) the transfer risk that the **client** must have been willing to take for a **personal recommendation** to transfer to be suitable. The relevant transfer risks are:

- (i) that their investments will not perform as expected, and they will have less income in retirement (investment risk);
- (ii) that the withdrawals from the scheme (planned and/or ad hoc) are not sustainable and the **client** will run out of money in retirement (longevity risk);
- (iii) that inflation will erode the real value of the income they are able to draw from their scheme (inflation risk); and
- (iv) that the **client** and/or their spouse may become less able to make the necessary financial decisions in relation to their income as they age (for example due to illness or diminishing capacity).

2.94 Determine, based on the information above and the information on the **client file**, whether the **client** has the necessary **attitude to transfer risk**.

2.95 A **client** is less likely to have the required **attitude to transfer risk** where:

- (a) the **client** wants certainty of income in retirement; and/or
- (b) the **client** does not want to manage their investments or pay for advice on investments so long as their funds last.

2.96 A **client** is more likely to have the required **attitude to transfer risk** where:

- (a) the **client** does not want any restrictions on their ability to access funds; and/or
- (b) the **client** wants to manage their investments or pay for advice on investments so long as the funds last.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

About transfer analysis

2.97 This question relates to the analysis firms must undertake when providing **pension transfer** advice. The required analysis depends on when the advice was given:

- (a) Up to 1 October 2018, [COBS 19.1.2R](#) required a firm to:
 - (i) carry out a comparison (i.e. the **TVA/TVAS**), complying with [COBS 19.1.3R and 19.1.4R](#), of the benefits likely (on reasonable assumptions) to be paid under a **DB scheme** (or, as from 8 June 2015, other pension scheme with **safeguarded benefits**) with the benefits afforded by a personal pension scheme or stakeholder pension scheme (or, as from 8 June 2015, other pension scheme with **flexible benefits**);
 - (ii) ensure that that comparison includes enough information for the **client** to be able to make an informed decision and takes into account the impact of transfer on the client's tax position and access to state benefits;

- (iii) give the **client** a copy of the comparison, drawing the **client client's** attention to the factors that do and do not support the firm's advice; and
 - (iv) take reasonable steps to ensure that the **client** understands the firm's comparison and its advice (or, as from 1 April 2018, how the comparison contributes towards the **personal recommendation**).
- (b) From 1 October 2018, the FCA rules at [COBS 19.1.1CR](#) require a firm to:
- (i) carry out an **APTA** and produce the **TVC** before making a **personal recommendation** on a transfer of pension benefits; and
 - (ii) take reasonable steps to ensure that the **client** understands how the key outcomes from these contribute towards the **personal recommendation**.

2.98 In a **TVA/TVAS**, firms will often use a **CY** figure to provide guidance on the level of return that the **client's** investments (after charges) will need to achieve in order to match what the **client** would have received in their **ceding arrangement**. The **TVA/TVAS** gives an indication of the level of risk that the **client** will have to take in order to achieve the same benefits.

2.99 The **APTA** compares the benefits likely to be paid and the options available under the **ceding arrangement** with those under the **proposed arrangement** ([COBS 19.1.2BR](#)). The **TVC** shows the amount that would have to be invested to "buy" future income benefits equal to those under the **ceding arrangement**, and thus helps the firm and **client** to compare the respective income benefits of the ceding and **proposed arrangement**.

2.100 The **TVC** shows the current cost to the **client** of replicating the benefits within their existing **DB scheme** using an annuity. It does not mean that the **client** is expected to purchase an annuity. This provides an indication of the 'value' of the **ceding arrangement** benefits which the **client** is then able to compare to the **CETV** that they are being offered.

2.101 Where the **TVA/TVAS**, or the **APTA** and/or **TVC**, show that the benefits of remaining in the **ceding arrangement** outweigh those likely to be available under the **proposed arrangement**, this will be a strong pointer against the transfer being in the **client's** best interests, absent some other compelling reason for the **client** to leave the **ceding arrangement**.

Steps to take – pre October 2018

2.102 Take the following steps for advice given before 1 October 2018 (except in cases where **clients** were within 1 year of their **NRD**):

- (a) **Compare (i) with (ii)**, using the information in the **TVA/TVAS** and taking into account any comments you have in your assessment in [Area 10](#) of the Information tab:

- (i) the **CY** that is relevant to the **client's** circumstances and objectives:
 - (A) if the **client** is single/unmarried, then use the single life **CY**;
 - (B) if the **client** is taking a **PCLS**, then use the **CETV** minus the **PCLS**;
 - (C) if the **client** wishes to retire early, use the **CY** at the early retirement date;

with

- (ii) the rate of return required on investments to match what is available under the **client's ceding arrangement**.
- (b) Identify, from the correspondence with the **client** and any **suitability report**, how the firm says the **TVA/TVAS** supports the firm's recommendation to transfer.
 - (c) Has the firm demonstrated that the **TVA/TVAS** supports the recommendation to transfer? Answer "yes" or "no".

2.103 The **TVA/TVAS** is less likely to support a recommendation to transfer if the **CY** shows that the rate of return required on investments is high compared to the rates of return shown in the **KFI** of the **proposed arrangement**.

2.104 When making this assessment you should consider the **proposed arrangement** and whether the assets recommended match the risk the **client** is willing and able to take. This impacts on the likely rates of return. Where the recommended assets do not match the risk the **client** is willing and able to take, you should factor this into your assessment of this example.

Steps to take – after 1 October 2018

2.105 Take the following steps for advice given from 1 October 2018:

- (a) Identify, using the information in the **TVC** and the firm's communications with the **client** and taking into account any comments you have in your assessment in [Area 10](#) of the Information tab:
 - (i) the difference between the **TVC** and the **CETV** offered to the **client**; and
 - (ii) how the firm explains in the **APTA** and other correspondence that the **client** will be better off in the **proposed arrangement**.
- (b) Has the firm demonstrated that the analysis supports the recommendation to transfer? Answer "yes" or "no".

2.106 The **TVC** and **APTA** are less likely to support a recommendation to transfer where:

- (i) the **TVC** is showing a significant loss, the **client** is seeking to take a regular income from the scheme and the transfer is not suitable for any other reason; and/or
- (ii) analysis in the **APTA** is based on unrealistic assumptions; for example, it assumes consistent annual growth rates/no periods of loss in investment markets.

2.107 The **TVC** and **APTA** are more likely to support a recommendation to transfer where:

- (i) the **TVC** shows a minor loss compared to the **CETV**;
- (ii) the **client's** planned rate of withdrawal from the pension scheme is minimal and the transfer achieves one or more of the **client's** objectives;
- (iii) analysis in the **APTA** incorporates stress testing that demonstrates the planned withdrawals are sustainable across a variety of market conditions; and/or
- (iv) analysis in the **APTA**, based on the **client's** specific circumstances, show the actual "loss" to the **client** is significantly reduced; for example, where the **client** is in ill health and the **TVC** is remodelled using assumptions to reflect an enhanced/impaired life annuity.

Example 10: The firm did not have a reasonable basis for believing that the client had the necessary knowledge and experience to understand the risks involved in transferring their DB scheme

2.108 This example relates to [COBS 9.2.2R\(1\)\(c\)](#), which requires a firm to obtain from the **client** such information as is necessary for the firm to have a reasonable basis for believing that the transaction to be recommended is such that the **client** has the necessary experience and knowledge in order to understand the risks involved in it.

2.109 [COBS 9.2.3R](#) provides further detail as to the nature of the information required to assess the client's knowledge and experience.

2.110 The guidance in [COBS 19.1.6G\(4\)\(b\)](#), issued on 1 April 2018, states that the firm should take into account the **client's** understanding of the risk of giving up **safeguarded benefits** in favour of **flexible benefits** when assessing suitability. From 4 October 2018, the guidance stated that in doing so the firm should take into account the factors listed in paragraph [2.87\(i\) to \(vii\)](#) above.

2.111 From 1 October 2018, [COBS 19.1.1CR](#) and [19.1.3ACR](#) require the firm to provide the **client** with a copy of the **TVC** and take reasonable steps ensure that the **client** understands how the key outcomes from the **APTA** and the **TVC** contribute towards the **personal recommendation**. For more information on the **APTA** and **TVC** see [Example 9 \(transfer analysis\)](#) above.

2.112 Before 1 October 2018, the firm must provide the **client** with a copy of the **TVAS** and:

- (a) ensure that the **TVAS** includes enough information for the **client** to make an informed decision: [COBS 19.1.2R\(2\)](#);
- (b) draw the **client's** attention to the factors that do and do not support the firm's advice: [COBS 19.1.2R\(3\)](#); and
- (b) take reasonable steps to ensure that the **client** understands the firm's **TVAS** and its advice (or, as from 1 April 2018, how the comparison contributes towards the **personal recommendation**): [COBS 19.1.2R\(4\)](#).

2.113 Where the **client** lacks relevant knowledge and experience, such that they are not able to understand the risks involved in the transfer, the firm should not generally recommend the transfer as being suitable. This includes the situation where the **client's** lack of knowledge has been caused by the firm's own failure to communicate information in a clear, fair and non-misleading way ([COBS 4.2.1R](#)). This rule applies in a way that is appropriate and proportionate taking into account the means of communication, the information the communication is intended to convey and the nature of the **client** and its business ([COBS 4.2.2G](#)).

2.114 Risks should also be communicated in a way that is fair, clear and not misleading ([COBS 4.2.1R](#)).

Steps to take

2.115 Take the following steps:

- (a) Refer to the information on the **client file**, the **APTA** and the **TVC** and the information recorded in the Information tab.
- (b) Identify the **client's** level of investment experience and knowledge of pensions and investments:
 - (i) in relation to **DB schemes**;
 - (ii) in relation to **DC schemes**; and
 - (iii) generally.
- (c) Identify the steps that the firm took to establish that the **client** could appreciate the nature of the risks they were taking with this transfer.
- (d) (from 1 October 2018) identify the steps that the firm took to ensure that the **client** understood how the key outcomes from the **APTA** and the **TVC** contribute towards the **personal recommendation** or
(pre October 2018) identify the steps that the firm took to ensure that the **client** understood the firm's **TVAS** and its advice.
- (e) Determine whether the **client** had the necessary experience and knowledge to understand the risks involved in transferring their **DB scheme**, taking into account, in particular:

what the **client** already knew:

- (i) information about the **client's** existing investment and pensions portfolio and the nature, volume and frequency of the **client's** transactions in pensions and investments;
- (ii) how long the **client** has been an investor;
- (iii) the **client's** experience with, and knowledge of, personal, stakeholder or workplace pension schemes;
- (iv) the **client's** experience of managing their pension or other investments or using a financial adviser to manage these investments;
- (v) the **client's** profession (if any) including whether it is relevant to the specifics of DB **pension transfer** advice and **investment advice**;
- (vi) whether the **client** should be considered vulnerable and the impact this has on the suitability of advice;

how the firm communicated the following risks and features to the **client**:

- (vii) the risks of transferring the **client's** pension and investing in a scheme with **flexible benefits**;
- (viii) (from October 2018) key outcomes from the **APTA** and **TVC** and whether these were communicated in a clear, fair and non-misleading way;
(prior to October 2018) the outcomes from the **TVA/TVAS** and whether these were communicated in a clear, fair and non-misleading way;
- (ix) the **PPF** and the overall safety of their pension savings; and

what the **client** is likely to have understood after this information is provided:

- (x) the overall impression that the **client** would reasonably have had of those features and risks, particularly in the light of:
 - (A) the entirety of the communications with the **client** ;
 - (B) the extent to which such communications were consistent in their presentation of those features and risks; and
 - (C) the **client's** relevant experience and knowledge.

2.116 This example is present when:

- (a) the firm did not communicate in substance the risks of transferring in a way the **client** would have understood; and/or

- (b) (post 1 October 2018) the firm did not communicate the outcomes of the **APTA** or **TVC** to the **client** in a way that the **client** would have understood; or
 (pre October 2018) the firm did not take reasonable steps to ensure that the **client** understood the firm's TVAS and its advice; and/or
- (c) the **client's** knowledge and experience was such that they would never be able to understand the risks involved in the transaction.

Example 11: The recommendation to transfer is unsuitable for the client's investment objectives or financial situation for some other reason

2.117 There may be other situations in which a transfer would be unsuitable for the **client**. For example:

- (a) The firm does not have a reasonable basis for believing that the transfer meets the **client's** investment objectives ([COBS 9.2.1R\(1\)\(a\)](#)), for example because the transfer would result in a tax liability that the **client** is unwilling to pay.
- (b) The firm does not have a reasonable basis for believing that the **client** can bear the risk involved in the transfer ([COBS 9.2.1R\(1\)\(b\)](#)), for example because it would result in a tax liability that the **client** is unable to pay.
- (c) The **client** has some specific objective in mind for the transfer (other than the objectives listed in **Examples 2, 3, 4, 5 and 6** above), but the firm should have taken into account the fact that this objective can be met in another way without the need for the transfer ([COBS 19.1.6G\(4\)\(e\)](#)), for example because remaining in the **ceding arrangement** would enable the **client** to access an ill-health early retirement pension which the **client** is eligible for.
- (d) The **client** intends to emigrate and has a specific objective of transferring to a qualifying overseas pension scheme, but the firm has not fully considered how this meets the client's investment objectives ([COBS 9.2.1R\(1\)\(a\)](#)), for example because the firm has not demonstrated sufficient understanding of the local market, including relevant legislation or protections, or the impact if the emigration does not proceed.

Steps to take

2.118 Take the following steps:

- (a) Refer to the information on the **client file** and/or (post October 2018) in the **APTA**, and the information recorded regarding the **client's** investment objectives and financial situation in the **template**.
- (b) Refer to the risks of transfer and features of **DB** and **DC schemes** as explained in FCA guidance online at <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit>.
- (c) Consider whether there is any reason, other than the reasons at **Examples 1 to 10** above, why the **personal recommendation** to

transfer was unsuitable for the **client's** investment objectives or financial situation.

2.119 By way of illustration only, this example may be present when:

- (a) the advice results in the **client** incurring a tax charge which the **client** is unwilling or unable to pay; and/or
- (b) the **client** could have taken an alternative course of action to meet their objectives (other than the specific objectives given above) with less cost or less risk.

2.120 In relation to whether the **client** would incur an unnecessary tax charge (for example, by crossing a tax threshold or entering a new tax band), consider whether there is evidence on the file that the **client** is likely to incur a **LTA** or other charge because of the transfer and the adviser has failed to consider the impact of this in the recommendation. By way of background, broadly speaking:

- (a) The **LTA** is a cap on the total value of pension benefits an individual can accrue across all schemes. At the point that the **client** takes benefits (i.e. withdraws benefits from their pension schemes) above the value of the **LTA**, they are currently subject to a tax charge of broadly 55% if they take a lump sum (or 25% + their marginal rate of income tax if they take a pension). Details of the LTA can be obtained at: <https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance>
- (b) If a member takes pension benefits from their **DB scheme**, the value of their benefits for testing against the **LTA** is 20x the initial income. However, for **DC schemes**, including personal pension schemes, the value for the **LTA** test is the fund value of the pension. This is illustrated further in the example below.

Example 12: The adviser recommended that the client retains the benefits within the scheme when a transfer appears to be suitable and in the client's best interests

2.121 This example relates to the overarching rule on suitability ([COBS 9.2.1R\(1\)\(a\)](#)) and the best interests test in [COBS 19.1.6G](#) (now [COBS 19.1.6G\(3\)](#)).

2.122 Where the firm can clearly demonstrate, on contemporary evidence, that the transfer is in the **client's** best interests and is suitable for the **client's** objectives and financial situation, it should recommend the transfer. This will be a fact-sensitive enquiry in every case.

2.123 This example is present when the firm has recommended that the **client** should remain in their **DB scheme**, but the **personal recommendation** was unsuitable for the **client's** investment objectives or financial situation or was otherwise not in the **client's** best interests. This might be the case, for example, if:

- (a) the **client** has a low life expectancy or is in serious ill health and the **client** could either secure a higher income via an enhanced/impaired life annuity or could benefit from greater lump sum death benefits;

- (b) the **client** has unmanaged debts and it is in their best interests to repay these immediately instead of retaining their **DB scheme** benefits;
- (c) the **client's** financial situation is likely to change in the near future such that they would not be able financially to bear the risks of remaining in the scheme; and/or
- (d) the **client** has no need for the benefits provided by this **DB scheme** and wishes to prioritise other objectives.

Outcome: overall assessment on suitability requirements

2.124 Take the following steps to determine whether the firm complied with the **suitability requirements**:

- (a) review the information on the **client file** and the features and risks of transferring from a **DB scheme** to a **DC scheme**;
- (b) determine whether the firm took reasonable steps to ensure that the **personal recommendation** was suitable, and select the appropriate outcome in the "assessor's suitability rating" box (either "compliant" or "non-compliant");
- (c) in all cases, insert your commentary on whether or not the firm complied with the **suitability requirements** with reference to the example(s) that support your conclusion and the COBS rules that the firm has not complied with; and
- (d) be aware that in any cases where you have answered "yes" to any of the questions, this will tend to indicate that the **personal recommendation** was "non-compliant".

2.125 The **template** will automatically indicate whether a **personal recommendation** is likely to be compliant or not: see further [paragraph 2.17](#) above.

2.126 The presence of an example in the suitability section of the **template** is not determinative as to whether a firm has complied with the **suitability requirements**. There may be other factors which mean that the firm has, despite the presence of the example, complied, or not complied, with the **suitability requirements**; for example:

- (a) Where your answer to [example 8](#) (*necessary attitude to transfer risk*) indicates that the firm's **transfer analysis** does not support a recommendation because the CY is high, but the recommendation to transfer is nonetheless suitable for the **client's** financial situation or objectives, for example because:
 - (i) the **client** has no reliance upon the income provided by the scheme so is not seeking to match or maximise income benefits; or
 - (ii) the **client** is in ill-health and is looking to transfer in order to maximise lump sum death benefits from the scheme.

- (b) Where your answer to [example 5](#) (*scheme is not at risk/adequate PPF protection*) indicates that the **client's** scheme is not at risk or the PPF would provide an adequate level of protection, but the **client** has no need for income from this scheme.

Note on “Non-compliant proceed to assess suitability” cases

2.127 Where you have assessed the suitability of a **personal recommendation** in circumstances where there was information missing from the **client file** (and so the firm's **information gathering** was non-compliant):

- (a) if your conclusion is that the recommendation was not suitable, take no further action.
- (b) if your conclusion is that the recommendation is suitable, make a note in this section to the effect that, based on the information on file you have concluded that the recommendation is *likely to be* suitable, but that this is not determinative because the file is missing key information. Make a note of what information is needed to demonstrate suitability.

3.0 Suitability – Proposed arrangement

Background

- 3.1 This suitability section contains examples which tend to show failure to comply or compliance with the **suitability requirements** for advice relating to the **proposed arrangement**.
- 3.2 The relevant **suitability requirements** are summarised in this section. They arise from the FCA rules.
- 3.3 For each **client file** you must:
- (a) fairly consider and give appropriate weight to all information on the **client file**; and
 - (b) decide, with reference to the examples in this section of the **template**, whether it is more likely than not that the firm failed to comply with the **suitability requirements**.
- 3.4 In considering the information on the **client file**, you must not assume that a firm complied with a suitability requirement solely on the basis that the **client** signed documentation that records their understanding or agreement to matters set out in that documentation.
- 3.5 When assessing whether a firm complied with the **suitability requirements** you must take into account the following:
- (a) the **client's** investment objectives;
 - (b) the **client's** financial situation, including their financial ability to bear the risks associated with the transfer consistently with their investment objectives;
 - (c) the **client's** ability, in light of the following, to understand the risks associated with the **proposed arrangement**:
 - (i) the experience and knowledge of the **client** relevant to managing their pension savings; and
 - (ii) information they have been given in the course of their dealings with the firm.
- 3.6 When assessing the reasonableness of a firm's conduct in relation to a **personal recommendation**, you must:
- (a) assess the firm's conduct against what was reasonable at the time when the firm made the **personal recommendation**; and
 - (b) determine that the conduct of the firm assessed was reasonable only where that firm displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the firm.

Two-adviser model

3.7 Where relevant, refer to the guidance at [paragraph 2.12](#) above.

How to complete this section

3.8 This section is divided into 4 parts:

- (a) Examples of unsuitability;
- (b) Suggested **template** rating;
- (c) Assessor's suitability rating; and
- (d) Assessor's rationale and evidence supporting suitability rating.

Completing the suitability requirements section

3.9 The **suitability requirements** section is used to record your assessment of whether or not the firm complied with the **suitability requirements**.

3.10 Take the following steps to complete the **suitability requirements** section:

- (a) review the information on the consumer file and the information recorded in the data section of the **template** ("the available evidence");
- (b) determine whether the available evidence shows overall that any or all of **examples 1 to 8** are present or not;
- (c) indicate whether any or all of **examples 1 to 8** are present or not, by selecting "yes" or "no";
- (d) determine, taking into account the available evidence, whether the firm complied with the **suitability requirements**; and
- (e) insert your commentary on whether or not the firm complied with the **suitability requirements**, with reference to the example(s) that support your conclusion.

3.11 The **template** advice rating will automatically default to "compliant" or "non-compliant" depending on your answer to the example questions in the **template**. The "non-compliant" rating may indicate that the **personal recommendation** does not comply with the **suitability requirements**.

3.12 The **template** asks whether the following examples are present or not:

Example	
1	The recommendation is unsuitable for how or when the client intends to access their pension savings
2	The client was in ill-health or had lifestyle factors indicating eligibility for an enhanced annuity, but has been recommended a standard annuity

3	The client has incurred unnecessary or excessive adviser or product charges
4	The recommended solution requires ongoing review and rebalancing but this has not been explained or arranged
5	The client was not willing to take the required risk with the sum invested
6	The client does not have the capacity to bear the risk of this investment
7	The client did not have the necessary knowledge and experience to understand the risks of investing in the proposed arrangement
8	The recommendation is not suitable for the client's investment objectives or financial situation for some other reason

3.13 The following sections contain guidance for determining whether the available evidence shows overall that an example is present.

Example 1: The recommendation is unsuitable for how or when the client intends to access their pension savings

3.14 This example engages the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#) and the requirement in [COBS 9.2.2R\(1\)\(a\)](#) to obtain such information as is necessary to have a reasonable basis for believing that the recommended course meets the **client's** investment objectives. It may also engage the requirement at [COBS 9.2.2R\(1\)\(b\)](#) that the **client** is able to bear the investment risks consistent with their investment objectives.

3.15 **Clients** may have various intentions regarding how and when they require access to their pension savings. Some may seek immediate access to funds; others may prefer an ongoing income. The recommendation must be tailored to the **client's** objectives for how or when they intend to access their pension savings. For example:

- (a) if the client intends to take a pension commencement lump sum (PCLS) immediately, locking the funds into an illiquid investment may prevent the **client** from achieving their objective (because sufficient funds may not be available for the PCLS) and is highly likely to be unsuitable for the client's timescales.
- (b) if the client intends to take a long-term income but the firm recommends an immediate lump sum withdrawal of a substantial sum from pension funds without a proper plan in place for generating a long-term income. This is likely to be unsuitable for the client's objectives and may be unsuitable for their financial situation ([COBS 9.2.1R\(1\)\(a\)](#)).

Steps to take

3.16 Take the following steps:

- (a) Identify the **client's** objectives for accessing their pension savings, including:
 - (i) how the **client** intends to access their pension savings (for example drawdown, annuity, uncrystallised pension lump sum payments);
 - (ii) when the **client** intends to first access their pension savings; and
 - (iii) the frequency with which the **client** intends to access those savings after that date.
- (b) Consider whether the **proposed arrangement** (including the related strategy for managing the **client's** pension investments) is suitable for the **client's** objectives for accessing their savings.
- (c) The following circumstances may make the recommendation unsuitable for the **client's** timescales:
 - (i) if the **client** intends to withdraw money from their pension savings within X years, but their pension savings are invested for a fixed term that is longer than X years; or
 - (ii) if the **client** intends to take a **PCLS** immediately (or within a short time after transfer) but the pension is fully invested in illiquid assets or assets that will fluctuate with short term volatility.

Example 2: The client was in ill-health or had lifestyle factors indicating eligibility for an enhanced annuity, but has been recommended a standard annuity

- 3.17 This example relates to the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#), and the obligation on the firm to obtain the necessary information to have a reasonable basis for believing that the recommendation:
- (a) meets the **client's** investment objectives ([COBS 9.2.2R\(1\)\(a\)](#)); and
 - (b) is such that the **client** can bear the risks of the investment ([COBS 9.2.2R\(1\)\(b\)](#)).
- 3.18 The **client's** best interests rule at [COBS 2.1.1R](#) and the guidance in [COBS 19.1.6G](#) (after 1 April 2018 at [COBS 19.1.6G\(3\)](#)) is also relevant to your assessment.
- 3.19 A **client** may be eligible for an enhanced annuity where there are indicators of a limited life expectancy. Where such indicators are present, one of the risks of a standard annuity (or any other investment intended to pay out over a relatively long period of time) is that the **client** will not survive to take the full income benefits of the annuity/pension. Failure to take advantage of an enhanced annuity where it is available is likely to go against the **client's** best interests and, therefore, the recommendation in this example is very likely to be unsuitable.

Steps to take

- 3.20 Where the firm has recommended a standard annuity take the following steps:

- (a) Identify from the **client file** whether the **client** has health issues or certain lifestyle factors which may indicate that the **client** is eligible for an enhanced annuity.
- (b) The following may indicate that a **client** is eligible for an enhanced annuity:
 - (i) whether the **client** is or was a smoker;
 - (ii) the number of units of alcohol the **client** consumes per week; and/or
 - (iii) whether the **client** is taking medication for high blood pressure, high cholesterol or other serious health conditions.
- (c) Identify whether the firm considered the **client's** eligibility for an enhanced annuity.
- (d) Consider whether the recommended standard annuity is suitable for the **client's** circumstances and investment objectives.

3.21 A standard annuity is less likely to be suitable when a **client** is in ill health or any of the lifestyle factors listed at (b) above apply.

Example 3: The client has incurred unnecessary or excessive adviser or product charges

3.22 This example relates to the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#), and the obligation on the firm to obtain the necessary information to have a reasonable basis for believing that the recommendation:

- (a) meets the **client's** investment objectives ([COBS 9.2.2R\(1\)\(a\)](#)); and
- (b) is such that the **client** can bear the risks of the investment ([COBS 9.2.2R\(1\)\(b\)](#)).

3.23 The **client's** best interests rule at [COBS 2.1.1R](#) and the guidance in [COBS 19.1.6G](#) (after 1 April 2018 at [COBS 19.1.6G\(3\)](#)) and in [COBS 6.1A.16G](#), is also relevant to your assessment. The guidance at [COBS 6.1A.16G](#) requires a firm to consider whether the **personal recommendation** is likely to be of value when the totality of the charges the client is likely to be required to pay are taken into account.

3.24 [COBS 19.2.2R](#) (in force from 1 October 2012) is also relevant. It requires a firm to explain in a **suitability report**:

- (a) (where a firm recommends a personal pension scheme) why it considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme;
- (b) (where a firm recommends a personal pension scheme, stakeholder scheme or FSAVC), why it considers that scheme to be at least as suitable as any workplace pension scheme available to the **client**.

3.25 Where a national alternative, such as NEST, is available, advisers should take into account whether the individual could use NEST and whether it is capable of meeting their needs (see [COBS 6.2B.23G](#) or before 3 January 2018 at [COBS 6.2A.17G](#)). The

FCA stated in [CP10/26](#) that it considers NEST to be a 'relevant financial product' in the context of advice on pensions (see paragraph 2.28 of [CP 10/26](#)).

- 3.26 In general, the FCA expects that a firm should justify why they have not recommended a stakeholder or workplace pension scheme where these are of lower cost than the recommended alternative.
- 3.27 The charges relating to an investment must be considered as part of its overall costs, and should therefore form part of the evaluation of its risks and relative advantages and disadvantages.
- 3.28 Charges are to be expected with any professionally-managed investment. Charges will be unnecessary or excessive where substantially identical products or services are available at no, or materially lower, cost or where charges are duplicated.

Where, as in this example, the **proposed arrangement** carries such unnecessary or excessive charges, the recommendation is not likely to be in the **client's** best interests.

Steps to take

- 3.29 Take the following steps to assess whether the adviser and product charges were reasonable and in the client's best interests:
- (a) Identify from the **client file** the charges that the **client** has incurred for:
 - (i) the **proposed arrangement** (product, platform and investment costs);
 - (ii) advice; and
 - (iii) ongoing advice.
 - (b) Calculate, taking into account how the firm has structured or shaped their charges, how the charges impact on the **client's** savings over time.
 - (c) Identify whether there were lower cost alternatives available (for example if the **client** is a member of a workplace pension scheme).
 - (d) Identify whether there is any functionality within the **proposed arrangement** that the **client** does not require.
 - (e) Taking into account the factors above, determine:
 - (i) whether the charges are necessary or not; and
 - (ii) whether the charges are reasonable or excessive; and
 - (f) Record whether this example is present by selecting "yes" or "no" on the **template**.

Example 4: The recommended solution requires ongoing review and rebalancing but this has not been explained or arranged

Ongoing advice and rebalancing

- 3.30 This example relates to the balance of assets and investments in the **client's** pension scheme. It engages the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#) and the requirement in [COBS 9.2.2R\(1\)\(b\)](#) for the firm to have a reasonable basis for believing that the transaction recommended is such that the **client** is financially able to bear any related investment risks consistent with his investment objectives.
- 3.31 [COBS 9.2.2R\(1\)\(c\)](#) requires the firm to have a reasonable basis for believing that the transaction recommended is such that the **client** has the necessary experience and knowledge in order to understand the risks involved in it.
- 3.32 In circumstances where assets have been allocated between different funds or investments there is a risk that, without ongoing review and rebalancing of the asset allocation, the portfolio will become unbalanced over time (for example because assets become disproportionately concentrated in higher-performing but riskier funds).
- 3.33 Making specific provision for automatic or periodic review and rebalancing helps to mitigate this risk. At the very least, the **client** should be made aware of the need for it. Where no such provision has been arranged and the **client** has not been appropriately warned, the recommendation is likely to be unsuitable.
- 3.34 Be aware that the **client file** alone may not tell you whether the firm has a review procedure in place for the **client**, as this may be recorded separately (for example in the firm's back-office system or in its initial disclosure document).

Steps to take

- 3.35 To identify whether this example is present or not, take the following steps:
- (a) Identify whether the firm has recommended that the **client** invest in several funds or investments to meet a set asset allocation; and if so,
 - (i) whether the firm has arranged for ongoing review or automatic rebalancing (at product or platform level); or
 - (ii) whether the firm has explained that the **client** will need to make arrangements to review or rebalance their portfolio.
 - (b) If the **client's** asset allocation needs ongoing review or rebalancing and the firm has not arranged for (i) or given the **client** the information in (ii) above, this example is likely to be present.

Example 5: The client was not willing to take the required risk with the sum invested

- 3.36 This example relates to the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#), and the obligation on the firm to obtain the necessary information to have a reasonable basis for believing that the recommendation is such that the **client** can bear the risks of the investment ([COBS 9.2.2R\(1\)\(b\)](#)).
- 3.37 The firm is required to obtain information about the **client's** preferences regarding risk taking and risk profile.

3.38 Where the **client** is unwilling to tolerate the risks inherent in a recommended investment, it is likely that the firm has failed to have due regard to the **client's** attitude to risk. The **client's** objective (i.e. holding a less risky investment) will also probably not have been met. The recommendation is therefore very unlikely to be suitable.

Assessment of attitude to risk

3.39 The **client's** attitude to risk (or risk tolerance) is a subjective measurement of the **client's** willingness to accept risk. The assessment is based on how the **client** feels about taking investment risk. This may include how the **client** would react to a fall in the value of their investment, how large a fall they could tolerate before feeling uncomfortable or considering selling, and whether the **client** is comfortable with short term volatility.

3.40 If the firm uses a tool in this part of the suitability assessment, you should consider, with reference to the guidance in [FG11/5](#) (*Assessing suitability: Establishing the risk a customer is willing and able to take and making a suitable investment selection*) whether:

- (a) the tool or software is capable of taking into account matters relevant to the assessment of a **client's** attitude to risk; and
- (b) the tool or software appropriately scores non-committal (neither agree nor disagree / no strong opinion) and resolves contradictory answers;
- (c) that any factors which are not included in the tool or software, or which are not resolved by the software, are factored into the firm's assessment of the **client's** attitude to risk.

3.41 If you consider that the **client** was not willing to take the required risk with the sum invested, notwithstanding that the tool has indicated the contrary, you should answer "yes" in this part of the **template**.

3.42 Where a firm has used a 'risk descriptor' to frame discussion, the risk descriptor should outline the nature of the risk the **client** is likely to experience. Assessors should consider whether the descriptors effectively quantify the type/level of risk that the **client** may be subject to.

Steps to take

3.43 **Compare:**

- (a) the information on the **client file** and, in particular, the information recorded in the **template** on the firm's assessment of the **client's** attitude to risk, focusing on the degree of risk the **client** was willing to take with the sum to be invested in the **proposed arrangement** (not, for the purposes of this question, the degree of risk the consumer was able to take);

with

- (b) the degree of risk the **client** must have been willing to take in order to justify a **personal recommendation** to invest in the assets in the **proposed arrangement**.

3.44 Answer “yes” (i.e. this example is present) where the **client’s** attitude to risk does not match the degree of risk they must have been willing to take with the sum invested (by reference to the risk scale used by the firm).

Example 6: The client does not have the capacity to bear the risk of this investment

About capacity for loss

3.45 Capacity for loss, or ability to bear risk, refers to the **client’s** ability to absorb falls in the value of their investment. If any loss of capital would have a materially detrimental effect on their standard of living, this should be considered in assessing the risk that they are able to take.

3.46 Capacity for loss is an objective assessment, based on the financial circumstances of the **client** . How much can the **client** afford to lose before this would materially affect their standard of living? It should be clear from the **information gathering** whether there is an issue around capacity for loss.

3.47 This example is similar to **Example 5** above, with the key difference that it relates to capacity for risk rather than attitude to risk. In this example, the relevant COBS rules are:

- (a) the overarching requirement to assess suitability in [COBS 9.2.1R\(1\)\(a\)](#);
- (b) [COBS 9.2.2R\(1\)\(b\)](#), which requires the firm to obtain information about the **client’s** financial situation, to assess whether the **client** is able financially to bear any related investment risks consistent with their investment objectives; and
- (c) [COBS 9.2.1R\(2\)](#), which requires the firm to obtain the necessary information regarding the **client’s** financial situation so as to enable it to make a suitable recommendation.

3.48 If the **client** is unable to bear the risk of the recommended investment, the requirement in [COBS 9.2.1R\(2\)\(b\)](#) is unlikely to have been satisfied, and the recommendation will generally be unsuitable.

Steps to take

3.49 Take the following steps to identify whether this example is present:

- (a) Refer to the information on the **client file** and the information recorded on the **client’s** financial situation in the Information tab of the **template**.
- (b) Identify how the funds are invested.
- (c) Taking into account, in particular:
 - (i) the concentration of the investment in one fund, group of funds, or asset class;
 - (ii) the degree of risk the **client** must be willing to take with the sum invested in those asset classes;

- (iii) the source and extent of the **client's** assets;
- (iv) the exposure to different asset classes;
- (vi) the level of stability of returns or security of invested capital in the **proposed arrangement**; and
- (vii) the impact the loss of the capital invested would have on the **client's** overall standard of living,

to determine whether the recommended solution was suitable for the **client's** financial situation.

3.50 Where there is a high concentration of investment in one fund, group of funds (particularly higher risk ones), or asset class, then there is a greater risk of losses in those fund(s)/asset(s) being more than the **client** can bear.

3.51 Answer "no" (i.e. this example is not present) where the investment was speculative: the **client** has no need for the income from their pension investments (it is disposable) and would not be using it to maintain their standard of living.

Example 7: The client did not have the necessary knowledge and experience to understand the risks of investing in the proposed arrangement

3.52 This example relates in particular to [COBS 9.2.2R\(1\)\(c\)](#), which requires a firm to obtain from the **client** such information as is necessary for the firm to have a reasonable basis for believing that the transaction is such that the **client** has the necessary experience and knowledge in order to understand the risks involved in it.

3.53 [COBS 9.2.3R](#) provides further detail as to the nature of the information required.

3.54 Where the **client** lacks relevant knowledge and experience, such that they are not able to understand the risks involved in the transfer, the firm should not generally recommend the transfer as being suitable. This includes the situation where the **client's** lack of knowledge has been caused by the firm's own failure to communicate information in a clear, fair and non-misleading way.

Steps to take

3.55 Take the following steps to identify whether this example is present:

- (a) Refer to the information on the **client file**, and the information recorded in the Information tab.
- (b) Identify the **client's** level of investment experience and knowledge of pensions and investments in relation to:
 - (i) **DC schemes**; and
 - (ii) investments generally.
- (c) Identify the steps that the firm took to establish that the **client** could appreciate the nature of the risks they were taking with this transfer.
- (d) Taking into account, in particular:

- (i) information about the **client's** existing investment and pensions portfolio and the nature, volume and frequency of the **client's** transactions in pensions and investments;
- (ii) how long the **client** has been an investor;
- (iii) the **client's** experience with, and knowledge of **DC schemes**, including personal, stakeholder or workplace pension schemes;
- (iv) the **client's** experience of managing their pension or other investments or using a financial adviser to manage these investments;
- (v) the **client's** profession (if any) including whether it is relevant to pensions and **investment advice**;
- (vi) how the firm communicated the risks of the recommended investments;
- (viii) the overall impression that the **client** would reasonably have had of those features and risks, particularly in the light of:
 - (A) the entirety of the communications with the **client**;
 - (B) the extent to which such communications were consistent in their presentation of those features and risks; and
 - (C) the **client's** relevant experience and knowledge,

determine whether the firm had a reasonable basis for believing that the **client** had the necessary experience and knowledge to understand the risks involved in the recommended investment.

3.56 Answer "yes" (i.e. this example is present) where the firm did not communicate in substance the risks of the recommended investment in a way the **client** would have understood.

Example 8: The recommendation is not suitable for the client's investment objectives or financial situation for some other reason

3.57 Aside from the examples given above, there may be other situations in which the **proposed arrangement** would be unsuitable for the **client**. For example:

- (a) the recommendation does not meet the **client's** objectives ([COBS 9.2.2R\(1\)\(a\)](#)), because it does not enable the **client** to hold their preferred asset classes within their pension fund;
- (b) the recommendation involves a risk that the **client** is unable to bear ([COBS 9.2.2R\(1\)\(b\)](#));
- (c) The recommendation is not suitable for the **client's** financial situation because the **client** is reliant on a guaranteed income in retirement but the **proposed arrangement** would not provide this ([COBS 9.2.2R\(1\)\(b\)](#));

- (d) the **client** has some specific objective in mind for their pension savings, but this objective can be met in another way.

Steps to take

3.58 Take the following steps to identify whether this example is present:

- (a) Refer to the information on the **client file** and the information recorded on the **client's** investment objectives and financial situation in the **template**.
- (b) Refer to the risks of transfer and features of **DB schemes** and **DC schemes** as described further on the FCA's website at <https://www.fca.org.uk/consumers/pension-transfer-defined-benefit>.
- (c) Consider whether there is any reason, other than the reasons at **examples 1 to 7 above**, that the **personal recommendation** to transfer was unsuitable for the **client's** investment objectives or financial situation.

3.59 Answer "yes" (i.e. the example is present) where:

- (a) The advice results in the **client** incurring a tax charge which the **client** is unwilling or unable to pay.
- (b) The **client** could have taken an alternative course of action to meet their objective with less cost or less risk.
- (c) The **client** did not want to manage their investments or pay for someone to manage their investments.
- (d) The **client** wanted security or a guaranteed income and the recommendation did not meet this objective.
- (e) The recommended solution does not enable the **client** to hold their preferred asset classes within their pension scheme.

Tax charges

3.60 In relation to whether the **client** would incur an unnecessary tax charge (for example, by crossing a tax threshold or entering a new tax band) consider whether there is evidence on the file that the **client** is likely to incur a charge and the adviser has failed to consider the impact of this in the recommendation.

3.61 While pension assets grow free of taxation, benefits drawn by individuals are subject to taxation (except for the **PCLS**).

3.62 Pension 'income' withdrawals (withdrawals made over and above the **PCLS** entitlement) are charged to income tax at the **client's** marginal rate of tax in the tax year that they are drawn. Significant lump sum 'income' withdrawals can therefore result in the **client** incurring a significant tax burden in a single year. Incurring additional tax does not automatically make advice unsuitable; however, assessors need to consider whether there is good reason to incur this additional level of tax.

Outcome: overall assessment on suitability requirements

- 3.63 Take the following steps to determine whether the firm complied with the **suitability requirements**:
- (a) review the information on the **client file** and the features and risks of the recommended investment solution for their pension;
 - (b) determine whether the firm took reasonable steps to ensure that the **personal recommendation** was suitable, and select the appropriate outcome in the "assessor's suitability rating" box (either "compliant" or "non-compliant");
 - (c) in all cases, insert your commentary on whether or not the firm complied with the **suitability requirements** with reference to the example(s) that support your conclusion; and
 - (d) be aware that, in any cases where you have answered "yes" to any of the questions, this will tend to indicate that the **personal recommendation** was "non-compliant".
- 3.64 The **template** will automatically indicate whether a **personal recommendation** is likely to be compliant or not: see further [paragraph 3.11](#) above.
- 3.65 The presence of an example in the suitability section of the **template** is not determinative as to whether a firm has complied with the **suitability requirements**. There may be other factors which mean that the firm has, despite the presence of the example, complied, or not complied, with the **suitability requirements**.

4 Insistent client

General

- 4.1 For the purposes of this **template**, a **client** is an **insistent client** if:
- (a) the firm has given the **client** a **personal recommendation** in relation to the transfer of their **safeguarded benefits**;
 - (b) the **client** decides to enter into a transaction which is different from that which the firm has recommended;
 - (c) the **client** wishes the firm to facilitate the transaction; and
 - (d) the firm arranges the transaction for the **client**.
- 4.2 You will most likely see an **insistent client** scenario when:
- (a) a firm recommends that the **client** stay in their **DB scheme** (and so retain their **DB scheme** benefits); and
 - (b) the **client** responds that they wish to transfer anyway.
- 4.3 The **insistent client requirements** are summarised below. You will need to identify when the advice was given, and look at the corresponding rules which applied at that time.
- The requirements*
- 4.4 Prior to 1 November 2007, [COB 5.3.25R](#) required a firm to provide a confirmation and explanation, in writing, to the private customer that the firm's advice was that the private customer should not proceed with the pension opt-out or **pension transfer**
- 4.5 The requirements in force since 1 November 2007 derive from:
- (a) [COBS 4.2.1R](#) (the clear, fair and not misleading rule);
 - (b) [COBS 2.1.1R](#) (the **client's** best interests rule) and the duty under [Principle 6](#) on a firm to pay due regard to the interests of its customers and treat them fairly;
 - (c) [COBS 2.2.1R](#): a firm must provide appropriate information to **clients** about the firm and its services; designated investments (including personal pension schemes) and strategies, including their risks; and costs and charges;
 - (d) [COBS 9.2](#) (**suitability requirements**); and
 - (e) [COBS 9.5](#) and [SYSC 9](#) (record keeping requirements)
- 4.6 From July 2014, you should also refer to [Thematic Review 14/12](#) on Enhanced Value Pension Value Transfers, which included a section on **insistent clients** indicating that it was:

- (a) good practice to discuss with such **clients** their reasons and the risks of not accepting the **personal recommendation** (documenting the reasons, the discussion and its outcome in a separate document); and
- (b) bad practice for communications with an insistent member not to contain sufficiently strong warnings about the risks of transferring against professional advice.

4.7 From February 2016, you should also refer to the FCA website information on [Pension Reforms and Insistent Clients](#) which set out the three key steps for advising an insistent clients, which are:

- (a) You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.
- (b) You should be clear with the client about the risks of their chosen course of action.
- (c) It should be clear to the client that their actions are against your advice.

4.8 From 3 January 2018, the guidance at [COBS 9.5AG\(3\)](#) states that the firm should communicate the following information to the **insistent client**:

- (a) that the firm has not recommended the transaction and that it will not be in accordance with the firm's **personal recommendation**;
- (b) the reasons why the transaction will not be in accordance with the firm's **personal recommendation**
- (c) the risks of the transaction proposed by the **insistent client**; and
- (d) the reasons why the firm did not recommend that transaction to the **client**;

and obtain an acknowledgment from the **client**, where possible in the **client's** own words, that (i) the transaction is not in accordance with the firm's **personal recommendation** and (ii) the transaction is being carried out at the request of the **client**.

Actions to complete this section of the template

4.9 When there is evidence that a **client** has become an **insistent client**, complete the "**insistent client**" tab as follows:

- (a) review the information on the **client file** and the information recorded in the Information tab of the **template** ("the available evidence");
- (b) determine whether the available evidence shows that it is more likely than not that the firm has complied with each of the steps specified at paragraph 4.9 below;
- (c) indicate whether the firm has complied with the step(s) by selecting "compliant" or "not compliant"; and

- (d) insert your commentary on whether the firm complied with the relevant step(s), with reference to the steps in paragraph 4.9 below.

Insistent client - Steps

- 4.10 A firm must first identify whether a **client** is insistent. If the **client** is not insistent do not complete this section of the **template**.

For an **insistent client** there are up to three steps (depending on when the advice was given) that a firm should carry out, and one further step to be completed where the firm provides a further **personal recommendation**. They are (in question format):

Identify:	Is the client an “ insistent client ”?
Step 1	Has the firm provided the necessary information to the insistent client ?
Step 2	Has the firm obtained an acknowledgement that the client is acting against advice?
Step 3	Where a firm gives a further recommendation in relation to the transaction proposed by the insistent client , has the firm made sure it is clear that this recommendation is separate from the firm’s initial recommendation?
Step 4	(From 3 January 2018 onwards) has the firm made a record of this process?

- 4.11 The next section of the instructions addresses how to identify an **insistent client**, what steps to take for an **insistent client**, and how to assess whether the firm has complied with the **insistent client requirements**.

Identify – is the client an “insistent client”?

- 4.12 For the purposes of COBS, a **client** is an **insistent client** if:
- (a) the firm has given the **client** a **personal recommendation** in relation to the transfer of their safeguarded benefits;
 - (b) the **client** decides to enter into a transaction which is different from that which the firm has recommended;
 - (c) the **client** wishes the firm to facilitate the transaction; and
 - (d) the firm arranges the transaction for the **client** .
- 4.13 The definition of **insistent client** comes from [COBS 9.5A.2G](#) which was issued on 3 January 2018. This definition should be used for all cases after 1 November 2007.
- 4.14 Prior to 1 November 2007, the **insistent client** provision in [COB 5.3.25R](#) applied to a private customer who instructed a firm to arrange a pension opt-out or **pension transfer** contrary to the advice of the firm.

Steps to take

- 4.15 Check whether the **client** meets the criteria listed above in 4.12(a) to (d), and select "yes" if the firm has correctly identified the **client** as an **insistent client**.
- 4.16 If the firm has not correctly identified the **client** as an **insistent client**, and they met the criteria for an "**insistent client**", select "no" and proceed to Step 2.
- 4.17 If the **client** is not an "**insistent client**" and the firm should not have followed the **insistent client** process, select "not an **insistent client**" and record your reasons in the box provided.

Step 1: has the firm provided the necessary information to the insistent client?

Background on information for insistent clients

- 4.18 Where a firm is willing to transact for **clients** on an **insistent client** basis (i.e. to carry out a transaction which is contrary to the firm's recommendation), the firm is required to communicate various matters, including the risks of the **client's** proposed course of action. The relevant FCA requirements and guidance are outlined in [paragraph 4.6](#) above.
- 4.19 The reason for the provision of the information above is to ensure that the **client** understands the ramifications of what they intend to do and the impact it will have on them.
- 4.20 This, alongside a firm's initial, clear, recommendation not to transfer, should help put the **client** in an informed position about what they wish to do next.
- 4.21 Our guidance (or rules, if the advice was given prior to 1 November 2007) does not prescribe when, by what method, or in what document the matters above are required to be communicated. You should have regard to all the communications between the **client** and the firm in order to assess whether the required matters have been communicated. Examples of documents where the matters might be communicated include:
- (a) in an initial **suitability report** where the firm recommends that the **client** does not transfer;
 - (b) in a second **suitability report** where the firm is recommending a suitable **proposed arrangement**; or
 - (c) in a separate, standalone document provided at a time between the initial and subsequent recommendations.
- 4.22 Irrespective of the timing, method, or document by which the matters were communicated, you must consider whether the communication satisfied each of the requirements specified above at [paragraphs 4.6 to 4.8](#). The steps to take to do this are outlined below.

Steps to take

- 4.23 Identify whether the firm has provided the following information to the **client** :

- (a) that the firm has not recommended the transaction, and that the transaction will not be in accordance with the firm's **personal recommendation**;
- (b) the reasons why the transaction will not be in accordance with the firm's **personal recommendation**;
- (c) the risks of the transaction proposed by the **insistent client**; and
- (d) the reasons why the firm did not recommend that transaction to the **client** .

4.24 Determine whether the firm has communicated the information in paragraph 4.23:

- (a) in a way which is clear, fair and not misleading in accordance with [COBS 4.2.1R](#); and
- (b) having regard to the information needs of the **insistent client**, so that the **client** is able to understand the information in paragraph 4.23.

4.25 You should rate the communication as "non-compliant" if either:

- (a) The firm has not provided all of the information in paragraph 4.23; or
- (b) The firm has provided the information, but it has not been communicated in accordance with the requirements in paragraph 4.24 (for example it isn't clear, fair or not misleading).

Step 2: has the client acknowledged that they are acting against advice?

Background

4.26 Following Step 1, it should be clear to the **client** that they are acting against the firm's recommendation and that the firm is acting at the **client's** request. The obligation on the firm is to obtain an acknowledgement of this (before 2 January 2018 the FCA's expectations are in [Thematic Review 14/12](#) and after 3 January 2018 see [COBS 9.5A.4G](#)). There should be evidence of an acknowledgement from the **client** to this effect.

4.27 The acknowledgment should be in the **client's** own words where that is possible (before 2 January 2018 the FCA's expectations are in [Thematic Review 14/12](#) and after 3 January 2018 see [COBS 9.5A.4G](#)). Therefore, if the acknowledgment is not in the **client's** own words, you should consider whether or not it was possible for the **client** to provide the acknowledgment in their own words.

4.28 A standard 'disclaimer'-style form would not automatically prompt a failure against this step. However, we are concerned that **clients** may view disclaimers as just another form to complete and they may not be fully aware of their meaning and effect. Where you see a disclaimer, you should assess whether the **client** did in fact understand what they were signing. For example:

- (a) If the form is very simplistic, with just a tick box or a space for the **client** to sign, or has been pre-completed by the firm, then it is likely that this step is "non-compliant".
- (b) If the form provides space for the **client** to write, in their own words, their rationale for acting on an insistent basis (i.e. contrary to the recommendation

of the firm), then the step should be classified as “compliant”, unless the form has not been filled in by the **client**, in which case you should consider whether a valid acknowledgement has been received.

Steps to take

- 4.29 To answer this question, identify whether the firm has a record of the **client’s** acknowledgement:
- (a) that the transaction is not in accordance with the firm’s **personal recommendation**;
 - (b) that the transaction is being carried out at the **client’s** request; and
 - (c) where possible, containing the acknowledgement in the **client’s** own words.
- 4.30 You should rate this answer as “non-compliant” if the **client** has not confirmed either (a) or (b) above.

Step 3: where the firm gives a further recommendation in relation to the transaction proposed by the insistent client, has the firm made it clear that this recommendation is separate?

- 4.31 Where a firm gives a further recommendation:
- (a) Prior to 1 November 2007, [COB 5.3.25R](#) required a firm to give the private customer a confirmation and explanation, in writing, that the firm’s advice is that the private customer should not proceed with the pension opt–out or transfer.
 - (b) [Thematic Review 14/12](#), which covers the FCA’s expectations over the period 1 November 2007 to 2 January 2018, states that the firm should give the **client** a robust warning.
 - (c) [COBS 9.5A.4G](#) which was in force from 3 January 2018, states that: where a firm gives a further **personal recommendation** in relation to the transaction proposed by the **insistent client**, the firm should make clear to the **client** that this **personal recommendation** is distinct from, but does not affect the conclusions of, the initial **personal recommendation**.
- 4.32 When assessing this step, you should consider whether the firm has communicated in a fair, clear and not misleading way ([COBS 4.2.1R](#)). For example, if the firm initially advised the **client** not to transfer their pension, and is subsequently advising on a potential **proposed arrangement**, then you should consider whether it is clear that the firm is still advising the **client** not to transfer their pension. If it appears (or may reasonably appear) that the firm is now recommending the transfer, then the step should be classified as “not compliant”.
- 4.33 Where dealing with an **insistent client**, the firm should, ideally, provide the further recommendation (for example on a **proposed arrangement**) in a separate letter to the initial recommendation (for example on the **pension transfer** itself). This letter should, ideally, come later in the process. This is because:
- (a) Having separate letters draws prominence to the initial recommendation.

- (b) Having a period of delay in the process will provide the **client** with time to reflect on the initial recommendation. In some cases, this may lead to a **client** changing their mind and deciding not to act contrary to that initial recommendation.
- (c) Where both recommendations are made in the same letter and/or are made at the same time, this creates a risk that it will not be sufficiently clear that (i) the recommendations are distinct and (ii) the further recommendation does not impact on the conclusions of the initial recommendation.

4.34 It is not an express requirement that the recommendations be in separate letters or made at different times. However, you should consider carefully whether the position is made sufficiently clear in accordance with the **insistent client requirements**.

Steps to take

4.35 This step only arises if the firm gives a further **personal recommendation** in relation to the transaction proposed by the **insistent client**.

4.36 If the firm does not give such a further **personal recommendation**, then you should select "N/A" in the **template**.

4.37 If the firm does give a further **personal recommendation**, then the firm should make clear to the **client** that:

- (a) the further **personal recommendation** is distinct from the initial **personal recommendation**; and
- (b) the further **personal recommendation** does not affect the conclusions of the initial **personal recommendation**.

4.38 If the firm does not make (a) and (b) clear, then the firm should be classified as "not compliant" for this step.

Step 4: the firm has retained a record of the process

Background

4.39 Firms are required to keep records under a number of provisions of the FCA Handbook. The relevant provisions are:

- (a) prior to 11 November 2007, [COB 5.3.25R](#) required a firm to make and retain a clear record of the firm's advice that the private customer should not proceed with the pension opt-out or **pension transfer** and the private customer's instructions to proceed with the transaction;
- (b) [Thematic Review 14/12](#), which covers the FCA's expectations over the period 1 November 2007 to 2 January 2018, states that:
 - (i) firms should discuss **clients'** reasons for, and the risks of, not accepting the **personal recommendation**; and document the reasons, the discussion and its outcome in a separate document; and
 - (ii) firms should also document the robust warning given to the **client**.

- (c) [COBS 9.5A.6G](#), in force from 3 January 2018, states that a firm dealing with an **insistent client** should retain a record of:
 - (a) the advice and transaction process followed, including the communications with the **client**; and
 - (b) the acknowledgment from the **client** referred to in [COBS 9.5A.4G](#).
- (d) [COBS 9.5A.6G](#), in force from 3 January 2018, states that a firm dealing with an **insistent client** should also refer to the record keeping requirements in [COBS 9.5](#) (Record keeping and retention periods for suitability records) and [SYSC 9.1](#) (General rules on record-keeping).

Steps to take

- 4.40 Identify whether the firm has retained a record of each of the matters specified above in respect of the particular **client**. There should be, for example, a record of:
 - (a) any information and instructions received from the **client**;
 - (b) any advice provided by the firm to the **client**;
 - (c) any communications between the **client** and the firm;
 - (d) any steps taken by the firm pursuant to the **client's** instructions (such as, for example, executing a transaction);
 - (e) any fees charged to and paid by the **client**; and
 - (f) any acknowledgement obtained by the **client** under Step 2 above.
- 4.41 Where the firm has not retained a record of all the matters specified above, then it should be classified as "Not compliant".
- 4.42 Identify whether the firm has kept a record of:
 - (a) the advice and transaction process followed, including the communications with the **client**; and
 - (b) the acknowledgment from the **client** referred to in Step 2 above.
- 4.43 Where the firm does not have a record of the above, it should be recorded as "not compliant".

Summary of insistent client section

- 4.44 This section of the insistent client tab has two boxes, one for you to review and the other for you to complete:
 - (a) **Tool rating:** this is the **template's** automatic rating of whether the firm has taken the steps above and is based on your answers to the question areas.
 - (b) **Assessor rating:** this is your own assessment of whether the firm has taken the steps above:

- (i) select "yes" if the firm has taken the required steps;
- (ii) select "no" if the firm has not taken the required steps.

4.45 In all cases record your reasons and evidence for the final insistent client rating.

5 Disclosure

General

- 5.1 This section records the information collected by the firm and held on the **client file** as part of the **information gathering** process.
- 5.2 Fill in each part of the Disclosure tab using the disclosure information on the **client file**. Where there is no disclosure information on the **client file**, you should leave the section blank. All answers should be based on information recorded up until the firm gave the advice or arranged the **pension transfer**, unless otherwise stated.
- 5.3 Complete the "disclosure" tab as follows:
- (a) review the information on the **client file** and the information recorded in the Information tab of the **template** ("the available evidence");
 - (b) determine whether the available evidence shows that it is more likely than not that the firm has given each of the required disclosures in the **template**;
 - (c) indicate whether the firm has complied with the relevant step(s) to give the required disclosure by selecting "compliant" or "not compliant"; and
 - (d) insert your commentary on whether the firm complied with the relevant step(s), with reference to the steps in each section below.
- 5.4 The **disclosure requirements** are set out below at paragraph 5.5. Disclosures must also be fair, clear and not misleading ([COBS 4.2.1R](#)).

Required disclosures

- 5.5 Consider whether the firm has made the following required disclosures:
- (a) for advice provided on or before 30 December 2012, initial disclosure of the firm's services and adviser charges;
 - (b) for advice provided on or after 31 December 2012, initial disclosure of the firm's services and adviser charges;
 - (c) for advice provided on or after 31 December 2012, specific disclosure of the firm's services and adviser charges;
 - (d) product disclosure;
 - (e) **suitability report** disclosure; and
 - (f) **pension transfer** disclosure.
- 5.6 All disclosures must be made in a way that is clear, fair and not misleading ([COBS 4.2.1R](#)).
- 5.7 This section of the instructions addresses the requirements in respect of each of the disclosure sections in the **template**.

- 5.8 For some disclosure questions, the **template** will prompt you to consider whether or not the disclosure caused the **client** to transfer their **DB scheme**.

Area 1. Disclosure of the firm's services and costs (if advice was given on or before 30 December 2012)

- 5.9 If advice was given **on or before** 30 December 2012 the requirements were in:
- (a) [COBS 2.2.1R](#) (information disclosure before providing services), in force since 11 January 2007;
 - (b) [COBS 4.2.1R](#) (clear, fair and not misleading rule), in force since 11 January 2007;
 - (c) [COBS 6.1.4R](#) (information about a firm and its services), in force since 11 January 2007; and
 - (d) [COBS 6.1.9R](#) (information about costs and associated charges), in force since 11 January 2007.

Steps to take

- 5.10 Take the following steps to assess whether the firm has complied with the relevant requirements:
- (a) **Question 1 and 2:** assess whether the firm has provided appropriate information to the **client** about:
 - (i) the firm and its services; and
 - (ii) costs and associated charges.
 - (b) **Question 3:** assess whether the firm has provided that information:
 - (i) in a clear and comprehensible form;
 - (ii) so that the **client** is reasonably able to understand the nature and risks of the service; and
 - (iii) so that the **client** is reasonably able to take investment decisions on an informed basis.

- 5.11 Rate this as "non-compliant" if:
- (a) the firm has failed to provide the information in paragraph 5.10(a) above; or
 - (b) the firm has provided the information, but it has not been provided in accordance with the requirements under the heading in paragraph 5.10(b).

Area 2. Initial disclosure of the firm's services and adviser charges (if advice was given on or after 31 December 2012)

Background

- 5.12 This section applies to advice given on or after 31 December 2012. The relevant rules are identified in the explanation below.
- 5.13 For that period, the **disclosure requirements** in respect of a firm's services and adviser charges fall into two stages. The first stage, *initial disclosure*, is addressed here and in Area 2 of the **template**. The second stage, *specific disclosure*, is addressed in Area 3 of the **template**.
- 5.14 The objective of the initial disclosure is to give the **client** enough information to decide whether they wish to engage this firm for its services or not. The information is generic because, at this stage, it is not personalised to the **client's** circumstances.
- 5.15 The initial disclosure should include information about:
- (a) the firm and compensation information, as set out in [COBS 6.1.4R](#) and [COBS 6.1.16R](#); and
 - (b) costs and associated charges, as set out in [COBS 6.1.9R](#).
- 5.16 This information must be provided in writing and in good time before making the **recommendation** (or providing related services) ([COBS 6.1.11R](#)). In this context:
- (a) "in good time" will usually mean prior to, or at the first meeting, ideally before a fact find is started; and
 - (b) where the information is provided in a second meeting, this would not meet our expectations, as it would not allow the **client** to understand what they will pay at a sufficiently early stage in the advice process;
- 5.17 This information should be communicated in a fair, clear and not misleading way ([COBS 4.2.1R](#)).
- 5.18 The firm must also provide information about its charging structure in writing and in good time before making the **recommendation** (or providing related services) ([COBS 6.1A.17R](#)).
- 5.19 A firm must also disclose, in good time before the provision of advice, whether its **investment advice** will be independent or restricted and the nature of any restriction (from 31 December 2012 to 2 January 2018 in [COBS 6.2A.5R](#) and thereafter in [COBS 6.2B.33R\(1\)\(a\) and \(b\)](#)).

Where advice is restricted, the firm must disclose what those restrictions are, for example to explain that they only offer investments from Firm A (from 31 December 2012 to 2 January 2018 [in COBS 6.2A.6R\(3\)](#) and thereafter [COBS 6.2B.33R\(1\)\(c\)](#)). The key risk to disclose is whether the firm's independence may be impaired due to the close relationship with another entity.

Assessment

- 5.20 For each question in this section indicate (by selecting "yes" or "no") whether:
- (a) **Question 1:** the initial disclosure was provided ([COBS 6.1.4R](#), [COBS 6.1.9R](#) and [COBS 6.1.16R](#));

- (b) **Question 2:** the initial disclosure was provided in good time before making the **recommendation** or related service ([COBS 6.1.11R](#)).
- (c) **Question 3:** the firm has provided the **client** with details of its charging structure ([COBS 6.1A.17R](#));
- (d) **Question 4:** the details of the charging structure were provided in writing in good time before making the **recommendation** ([COBS 6.1A.17R](#)):
- (e) **Question 5:** the disclosure of the charging structure is fair, clear and not misleading ([COBS 4.2.1R](#)); and
- (f) **Question 6:** the firm has explained the scope of its advice (whether it provides independent or restricted advice to its **clients**), including any restrictions on its advice .

5.21 If, on review of the available evidence, you consider that the firm has not complied with any or all of the indicators above, you must answer the relevant question(s) "no", and rate the disclosure as "non-compliant" for this disclosure area.

5.22 If, on review of the available evidence, you consider that the firm has not complied with any or all of the indicators above, you must answer the relevant question(s) "no", and rate the disclosure as "non-compliant" for this disclosure area.

Area 3. Specific disclosure of the firm's services and adviser charges (for advice on or after 31 December 2012)

Background

5.23 These **disclosure requirements** apply to advice given on or after 31 December 2012. They are tested in Area 3 of the template.

5.24 Specific disclosure complements initial disclosure, as it outlines what the **client** will actually pay and what services the **client** will actually receive. Specific disclosure comes at a later stage in the process, often when the firm has completed some preliminary work to understand precisely what it can/will do for the **client**.

5.25 Specific disclosure must be given as "early as practicable" in a durable medium (or via a website, if website conditions are met) ([COBS 6.1A.24R\(2\)\(b\)](#) and [COBS 6.1A.24R\(2\)\(c\)](#)) and include:

- (a) The total adviser charge payable in cash terms ([COBS 6.1A.24R\(2\)\(a\)](#));
- (b) If there are payments over a period of time ([COBS 6.1A.24R\(2\)\(d\)](#)):
 - (i) the amount and frequency of each payment due;
 - (ii) the period of time over which the payments are payable;
 - (iii) for payments not relating to an ongoing service, the sum total of all payments; and
 - (iv) the implications of cancelling before the charges are fully paid (initial and ongoing) ([COBS 6.1A.26G](#)).

5.26 Where a firm is required to disclose information “as early as practicable”, for example as required by [COBS 6.1A.24R\(2\)\(b\)](#), the FCA’s guidance in [FG 17/08](#) paragraphs 4.7 and 4.8 is that:

- (a) if the adviser charge varies depending on the type of recommendation or whether the customer decides to proceed or not (and therefore is ‘contingent’), then “as early as practicable” for the disclosure of the actual charge is likely to be at the point where the **recommendation** is made. This may be at the same time as the firm provides a **suitability report** or the corresponding **KFI**.
- (b) If the firm charges for a **suitability report**, then disclosing the specific fee for that report within the report itself is too late.

5.27 **Clients** should be able to understand what ongoing services they are receiving for any ongoing charge ([COBS 6.1A.22R\(1\)](#)). This is particularly important when the firm offers multiple types of ongoing service because, in this case, the **client needs** to understand which service they will receive. In practice, the firm’s communications here would usually refer to the initial disclosure where certain service levels are set out. Hence if it is explained in the **suitability report** or other document which service level applies, then this would meet our expectations.

Assessment

5.28 Indicate (by selecting “yes” or “no”) whether:

- (a) **Question 1:** the firm has disclosed the total adviser charge payable by the **client** ([COBS 6.1A.24R\(1\)](#));
- (b) **Question 2:** the disclosure of the total adviser charge was as early as practicable ([COBS 6.1A.24R\(2\)\(b\)](#)) (see the guidance in [paragraph 5.26](#) above):
- (c) **Question 3:** the disclosure of the total adviser charge is either ([COBS 6.1A.24R\(2\)\(a\)](#)):
 - (i) in cash terms; or
 - (ii) if not in cash terms, then converted into illustrative cash equivalents;
- (d) **Question 4:** the total adviser charge is disclosed either ([COBS 6.1A.24R\(2\)\(c\)](#)):
 - (i) in a durable medium; or
 - (ii) through a website (if the [website conditions](#) are satisfied);
- (e) **Question 5:** where there are payments over a period of time ([COBS 6.1A.24R\(2\)\(d\)](#)) the disclosure of the adviser charge includes:
 - (i) the amount and frequency of every payment due;
 - (ii) the period over which the adviser charge is payable;

- (iii) the implications for the **client** if the product is cancelled before the adviser charge is paid; and
- (iv) (if there is no ongoing service) the total sum of all payments; and
- (f) **Question 6:** where there is an ongoing service, that service is described in a clear, fair and non-misleading way ([COBS 4.2.1R](#)).

5.29 If, on review of the available evidence, you consider that the firm has not complied with any or all of the indicators above, you must answer the relevant question(s) "no", and rate the disclosure as "non-compliant" for this disclosure area.

Area 4. Product disclosure

Background

- 5.30 This area of disclosure relates to the product being recommended by the firm. The purpose of the requirements is to ensure that the client understands the product being recommended. The relevant product disclosure provision requirements are in [COBS 14.2](#) and the detail of their content is in [COBS 13.3](#) and 13.4.
- 5.31 [COBS 13.3.1R\(1\)](#) provides that a KFD must include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a client to be able to make an informed decision about whether to proceed.
- 5.32 [COBS 13.3.1R\(2\)](#) sets out some specific explanations that the KFD must address. For example, the KFD must identify whether a right to cancel or withdraw exists, and, if it does, its duration and the conditions for exercising it, including information about the amount a client may have to pay if the right is exercised. This would include, for example, details of any exit fee payable.
- 5.33 [COBS 13.4.1R](#) provides that a KFI must include appropriate charges information, information about any interest that will be paid to clients on money held within a personal pension scheme bank account and, if it is prepared for a non-PRIP packaged product which is not a financial instrument, a standardised deterministic projection.

Assessment

- 5.34 Indicate (by selecting "yes" or "no") whether:
 - (a) **Question 1:** the firm has provided the **client** with a **KFD** ([COBS 14.2.1R\(1\)](#)). In particular, the **KFD** should include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a **client** to be able to make an informed decision about whether to proceed. The full requirements for the contents of a **KFD** are set out at [COBS 13.3.1R and 13.3.2R](#).
 - (b) **Question 2:** the firm has provided the **client** with a **KFI** ([COBS 14.2.1R\(1\)](#)) unless the information that would be within the **KFI** is included in the **KFD** provided to the **client** ([COBS 14.2.6R](#)). The full requirements for the contents

of a **KFI** are set out at [COBS 13.4.1R to 13.4.4AR](#) and in [COBS 13 Annexes 3 and 4 1.1R](#).

- (c) **Question 3:** the **KFD** and/or **KFI** covers:
- (i) the correct fund(s) – (for the KFI COBS 13 Annexes 3 and 4 1.1R(1)(a)); and
 - (ii) The specific adviser charge (where this is paid/facilitated from the pension) ([COBS 13 Annexes 3](#) and [4 1.1R](#) (1)(b)).
- (d) **Question 4:** the **KFD** and/or **KFI** was provided ([COBS 14.2.14R](#)):
- (i) free of charge; and
 - (ii) in good time before the firm carries on the relevant business. (It is acceptable for the **KFD** and/or **KFI** to be provided at the same time as the **suitability report**, so long as the **suitability report** itself is provided at an appropriate time.)

5.35 If, on review of the available evidence, you consider that the firm has not complied with any or all of the indicators above, you must answer the relevant question(s) “no”, and rate the disclosure as “non-compliant” for this disclosure area. If, for questions 3 or 4, the firm has satisfied (i) but not (ii), use the comments box to record your observations.

Area 5. suitability report disclosure

5.36 Firms must provide a **suitability report** in the circumstances specified below:

Date	Circumstances	Rule
1 November 2007 to present	Firm made a personal recommendation and the client bought, sold, surrendered, converted or cancelled rights under, or suspended contributions to, a personal pension scheme or stakeholder pension scheme	COBS 9.4.1R(2)
1 November 2007 to 3 October 2018	Firm made a personal recommendation to the client and the client entered into a pension transfer or pension opt-out	COBS 9.4.1R(4)
8 June 2015 to 3 October 2018	Firm made a personal recommendation to the client and the client entered into a pension conversion	COBS 9.4.1R(4)
4 October 2018 to present	Firm made a personal recommendation to the client and the client entered into a pension opt-out	COBS 9.4.1R(4)
4 October 2018 to present	Firm made a personal recommendation in relation to a pension transfer or	COBS 9.4.2AR

	pension conversion (irrespective of what the client then did)	
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5.37 Since 1 April 2018, [COBS 19.1.1CR](#) has required that a firm must make a **personal recommendation** where a firm provides advice on conversion or transfer of pension benefits.

5.38 Since 1 April 2018, the guidance at [COBS 19.1.8G](#) has stated that if a firm provides a **suitability report** to a **client** in accordance with [COBS 9.4.1R](#) (i.e. including cases where following a **personal recommendation** the **client** enters into a pension opt-out or buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or stakeholder pension scheme), then the **suitability report** should include:

- (a) a summary of the advantages and disadvantages of its **personal recommendation**;
- (b) an analysis of the financial implications (if the recommendation is to opt-out);
- (c) a summary of the key outcomes from the **APTA** (if the recommendation is to transfer or convert); and
- (d) a summary of any other material information.

Steps to take

5.39 Indicate in the **template** (by selecting “yes” or “no”) whether:

- (a) **Question 1:** the **suitability report** includes a clear recommendation as to whether or not to transfer from the **DB scheme**;
- (b) **Question 2:** the **suitability report(s)** includes a clear recommendation regarding investing the proceeds of the **ceding arrangement** in the **proposed arrangement**;
- (c) **Question 3:** the **suitability report** specifies the **client’s** demands and needs ([COBS 9.4.7R\(1\)](#));
- (d) **Question 4:** the **suitability report** explains why the firm has concluded that the recommended transaction is suitable for the **client** ([COBS 9.4.7R\(2\)](#)). To answer this question, take into account the following:
 - (i) where the **client** wishes to retire early, the **suitability report** should explain how the recommendation meets that objective in comparison to an alternative course of action;
 - (ii) The **suitability report** should include reference to the elements of the **APTA**, if it has been completed, which support the recommendation;
- (e) **Question 5:** the **suitability report** explains any possible disadvantages of the transaction for the **client** ([COBS 9.4.7R\(3\)](#)). The **suitability report** should explain (where appropriate):

- (i) the implications of the loss of guarantees resulting from a transfer out of a **DB scheme**;
 - (ii) the transfer of risk from the scheme onto the **client**, with the result that the **client** needs to manage (A) investment risk, (B) inflation risk and (C) mortality risk;
 - (iii) where the **client** is reliant on income from the scheme, the fact that they risk running out of money in retirement because of a transfer out of the **DB scheme**;
- (f) **Question 6: the suitability report** is written in a way that is fair, clear and not misleading ([COBS 4.2.1R](#)).

5.40 If, on review of the available evidence, you consider that the firm has not complied with any or all of the indicators above, you must answer the relevant question(s) "no", and rate the disclosure as "non-compliant" for this disclosure area.

5.41 There are further specific requirements regarding matters that need to be disclosed when advising on **pension transfers**. Those are addressed in Area 5 or 6, below. You should be aware that firms often seek to disclose those matters within the **suitability report**.

Area 6. Defined benefit pension transfer disclosure

5.42 A firm must have a reasonable basis for believing that the **client** has the necessary knowledge and experience to understand the risks of transferring their **DB scheme** ([COBS 9.2.2R\(1\)\(c\)](#)).

5.43 A firm must also provide a minimum level of information to ensure that the **client** can make an informed decision on whether to transfer or not:

- (a) Prior to 1 October 2018, [COBS 19.1.2R](#) required the firm to:
 - (i) give the **client** a copy of the **TVA/TVAS** (complying with [COBS 19.1.3R and 19.1.4R](#)), drawing the **client's** attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the **KFD** is provided; and
 - (ii) ensure that that comparison includes enough information for the **client** to be able to make an informed decision;
 - (iii) take reasonable steps to ensure that the **client** understands the firm's comparison and its advice.
- (b) From 1 May 2012 to 31 March 2018, [COBS 19.1.7AG](#) stated that when giving a **personal recommendation** about a **pension transfer** or pension conversion, the firm should clearly inform the **client** about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the **client**, including (using the numbering in [COBS 19.1.7AG](#)):

- (i) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefits;
 - (ii) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the **client** is exposed until an annuity is purchased with the proceeds of the **proposed arrangement**; and
 - (iii) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the **ceding arrangement**.
- (c) From 1 April 2018, [COBS 19.1.2R](#) required the firm to:
- (i) give the **client** a copy of the **TVA/TVAS**, drawing the **client's** attention to the factors that do and do not support the firm's **personal recommendation**, in good time, and in any case no later than when the **KFD** is provided; and
 - (ii) take reasonable steps to ensure that the **client** understands the firm's comparison and how it contributes towards the **personal recommendation**.
- (d) From 1 October 2018, [COBS 19.1.1CR](#) and [COBS 19.1.3AR](#) require the firm to:
- (i) carry out the **APTA** (complying with [COBS 19.1.2BR](#), [COBS 19 Annex 4A](#) and [COBS 19 Annex 4C](#)) and produce the **TVC** (complying with [COBS 19.1.3AR](#) and [COBS 19 Annexes 4B and 4C](#));
 - (ii) provide the **TVC** to the **client** in a durable medium using the format and wording in [COBS 19 Annex 5](#) and following the instructions in [COBS 19.1.3AR](#); and
 - (iii) the **client** understands how the key outcomes from the **APTA** and the **TVC** contribute towards the **personal recommendation** ([COBS 19.1.1CR](#)).

5.44 The firm should also communicate with **clients** in a clear, fair and not misleading way ([COBS 4.2.1R](#)).

5.45 We expect the firm to bring **safeguarded benefits** to the **client's** attention in the documentation provided and to ensure that the **client** understood what that meant for their decision to transfer. In practice, much of this information is likely to be provided to the **client** in the **suitability report** supporting the advice. In particular, the suitability letter should have been personalised to state categorically if the **client** was entitled to **safeguarded benefits**, what those benefits meant for the **client**, and any conditions for exercising them.

Steps to take

5.46 Indicate on the **template** (by selecting "yes" or "no") whether the firm has provided the **client** with each of the following pieces of information to assist them to make

an informed decision whether or not to transfer (Note that the template will grey out those questions that are not relevant for the time the advice was given):

- (a) for advice prior to 1 October 2018, has the firm:

Question 1: provided the client with a copy of the **TVA/TVAS** ([COBS 19.1.3R](#) and [COBS 19.1.4R](#));

Question 2: (in correspondence with the **client**) drawn the **client's** attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the **KFD** is provided; and

Question 3: ensured that that the **TVA/TVAS** includes enough information for the **client** to be able to make an informed decision;

- (b) for advice given prior to 1 April 2018 has the firm:

Question 4A: taken reasonable steps to ensure that the **client** understands the firm's comparison and its advice.

- (c) for advice given between 1 April 2018 and 30 September 2018 has the firm:

Question 4B: taken reasonable steps to ensure that the **client** understands the firm's comparison and how it contributes towards the **personal recommendation**.

- (d) for advice after 1 October 2018:

Question 1: produce the **TVC** (complying with [COBS 19.1.3AR](#) and COBS 19 Annexes [4B](#) (**TVC**) and [4C](#) (Assumptions));

Question 2: provide the **TVC** to the **client** in a durable medium using the format and wording in [COBS 19 Annex 5](#) (format for **TVC**) and following the instructions in [COBS 19.1.3AR](#); and

Question 3: taken reasonable steps to ensure that the **client** understands how the key outcomes from the **APTA** and the **TVC** contribute towards the **personal recommendation** ([COBS 19.1.1CR](#)).

- (e) for all advice given between 1 May 2012 to 31 March 2018:

Question 5: identify whether the firm has explained the risks of transfer to the **client** ([COBS 19.1.7AG](#)) as set out in 5.35(b) above.

- 5.47 Indicate on the **template** whether the firm has provided the information required in 5.46 (a) to (e) above and communicated its recommendation to the **client** in a clear, fair and not misleading way ([COBS 4.2.1R](#)).

Summary of disclosure section

- 5.48 This section of the disclosure tab has two boxes, one for you to review and the other for you to complete:

- (a) **Tool rating:** this is the **template's** automatic rating of whether the firm has made the required disclosures to make a **personal recommendation** and is based on your answers to the 6 question areas.
- (b) **Assessor rating:** this is your own assessment of whether the firm has made the required disclosures:
 - (i) select "yes" if the firm has made the required disclosures;
 - (ii) select "no" if the firm has not made the required disclosures.

5.49 In all cases record your reasons and evidence for the final disclosure rating.

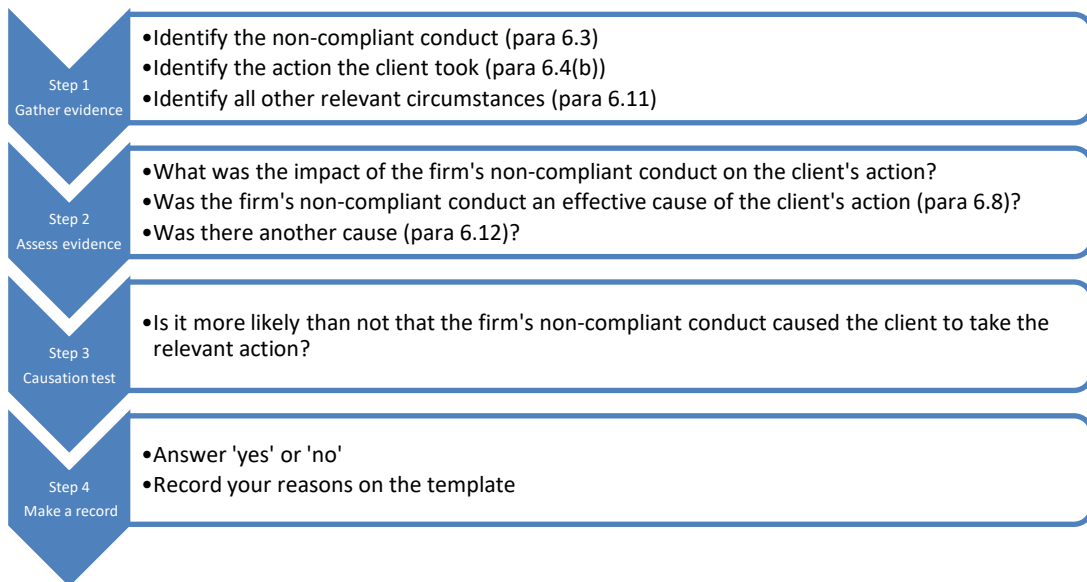
6 Causation

General

- 6.1 The causation tab is used to assess, based on the available evidence, whether it is more likely or not that the firm's non-compliant conduct caused the **client** to take an action that caused them loss.
- 6.2 The causation section proceeds on the assumption that the **client** suffered a loss. Redress will be considered separately.
- 6.3 Complete the causation tab by answering the causation question where you have concluded that there was non-compliant conduct, for example:
- (a) the firm has failed to comply with the **pension transfer suitability requirements**;
 - (b) the firm has failed to comply with the **investment advice suitability requirements**;
 - (c) the firm has failed to comply with the **insistent client requirements**; or
 - (d) the firm has failed to comply with specified **disclosure requirements**.

Steps to take

- 6.4 Take the following steps to complete the causation section:
- (a) review the information on the **client file** and the information recorded in the **template** (the "**available evidence**");
 - (b) determine whether the firm's non-compliant conduct (see paragraph 6.3) caused the **client** to take action to:
 - (i) transfer (their **safeguarded benefits**) to a pension scheme with **flexible benefits**;
 - (ii) remain in their **DB scheme**; or
 - (iii) invest their pension savings in accordance with the firm's recommendation.
 - (c) answer the causation question (is it more likely than not that the firm's conduct caused the **client** to take one of the actions listed at (b)) by selecting "yes" or "no"; and
 - (d) explain your conclusion with reference to the available evidence.
- 6.5 The following table illustrates how the guidance in this section applies to the above steps:



Assessing evidence: general principles

- 6.6 In assessing the available evidence, you must have regard to the impact of the firm's non-compliant conduct on the **client's** decision to take one of the actions listed in [paragraph 6.4\(b\)](#) in all the circumstances of the **client's** case.
- 6.7 It is not necessary for the non-compliant conduct to have been the sole or main cause of the **client** taking action in order for causation to be established.
- 6.8 So long as the non-compliant conduct was an effective cause of the **client's** action, it is immaterial that other factors (such as the advice or influence of a third party) also influenced the decision of the **client** to take a relevant step.

Appropriate weight to give to evidence

- 6.9 Appropriate weight needs to be given to the different parts of the available evidence. In deciding what weight to give to different parts use your common sense and consider what outcome is more probable than not.
- 6.10 Generally, more weight should be given to contemporaneous (or near contemporaneous) evidence than to evidence which significantly post-dates the time of the non-compliant conduct. This is particularly the case if the **client's** recollection is not consistent with the contemporaneous evidence.

Matters to take into account

- 6.11 When you answer the causation question, consider the impact of the following (note that this list is not exhaustive):
- (a) **The client's demands, needs and intentions** at the time of the advice including:
- the **client's** financial situation;
 - any potential tax or other liabilities the **client** has;

- (iii) the **client's** objectives and future financial needs throughout retirement;
 - (iv) the **client's** age and expected retirement age; and
 - (v) the **client's** state of health.
- (b) **The relevance of any features of the ceding arrangement or proposed arrangement to the client's demands, needs and intentions.** Take into account:
- (i) whether any features of the **client's ceding arrangement** or the **proposed arrangement** were *especially* relevant to the **client's** demands, needs and intentions; and
 - (ii) whether any of the firm's non-compliant conduct made it more or less likely that the **client** would take the action they did.
- (c) **The relevance of any failures to provide information about the scheme.** If a firm has failed to inform a **client** of risks or benefits of the **ceding arrangement** or **proposed arrangement** which were of particular concern to the particular **client** (given his or her demands, needs and intentions), then such failures may make it more likely that the non-compliant conduct caused the **client** to take the action they did; for example, if:
- (i) a **client** was not informed about the value of the benefits lost by transferring from the **ceding arrangement** to the new pension and how these lost benefits related to the **client's** income needs in retirement;
 - (ii) a firm failed to advise the **client** of other courses of action (as alternatives to a recommended **pension transfer**) which would potentially achieve the **client's** objectives (for example using a life policy to pay off a mortgage);
 - (iii) a firm did not advise the **client** of the impact of a cash payment from the pension on the **client's** tax position, and any increase of tax liability (by way of penalty or otherwise) which might result from a recommended course of action; or
 - (iv) a firm did not advise the **client** of the magnitude of the risk to the **client** if the pension were transferred, in circumstances where the **CY** was high.
- (d) **Whether the client sought specific information from the firm and to what extent that was provided.** If the **client** has sought specific information from the firm, then it is more likely that the information was relatively important to the **client** when making a decision as to whether to take a relevant action.
- (e) **The client's relevant knowledge and experience.** Consider:

- (i) the **client's** knowledge and experience in respect of financial transactions, investments and pensions, which are similar to the matters which were the subject of the firm's advice;
 - (ii) the extent to which the **client** understood the detailed reasoning (if any) within the firm's advice (or would have made a decision solely or primarily based on the firm's recommendation overall);
 - (iii) the extent to which the **client** read the firm's written advice (or would have made a decision solely or primarily based on advice given orally); and
 - (iv) the extent to which the **client** considered whether to take the relevant step independently of the firm's advice.
- (f) **A subsequent attempt by a firm to correct non-compliant conduct by the firm.** Consider:
- (i) whether initial non-compliant conduct was rectified by way of subsequent conduct (prior to the **client** taking a relevant step) such that the initial non-compliant conduct was unlikely to have affected the **client's** decision to take a relevant step;
 - (ii) whether the **client's** decision may have been made before or after the subsequent rectifying conduct of the firm; and
 - (iii) the relative weight that the **client** placed on (a) the initial non-compliant conduct and (b) any subsequent conduct of the firm.

Examples of when the firm's conduct is less likely to have caused the client to take a relevant action

6.12 If it is likely that the **client** would have taken any of the actions listed at [paragraph 6.4\(b\)](#) in the absence of the non-compliant conduct, then you should conclude that it is not likely that the non-compliant conduct caused the **client** to take the relevant action. In practice, this would be the case where it is more likely than not that:

- (a) **where the firm gave unsuitable transfer advice:**
 - (i) the **client** would still have transferred their pension, even if the firm had given suitable advice; or
 - (ii) the **client** would still have decided not to transfer their pension, even if the firm had given suitable advice;
- (b) **where the firm gave unsuitable investment advice,** the **client** would still have made the same decision in respect of the investments within their pension, even if the firm had given suitable advice;
- (c) **where the firm did not comply with the insistent client requirements,** the **client** would still have taken the relevant action, even if the firm had taken all of the relevant steps in the **insistent client** process; and/or

- (d) **where the firm did not comply with the disclosure requirements**, the **client** would still have taken the relevant step, even if the firm had given compliant disclosure in respect of its advice.

Examples of when the firm's conduct is more likely to have caused the client to take a relevant action

6.13 If it is likely that the **client** would not have taken any of the actions listed at [paragraph 6.4\(b\)](#) in the absence of the non-compliant conduct, then you should conclude that the non-compliant conduct did likely cause the **client** to take the relevant action; for example, where:

- (a) the **client** would not have transferred their pension if the firm had given suitable advice;
- (b) the **client** would have decided to transfer (rather than not to transfer) their pension if the firm had given suitable advice;
- (c) the **client** would have made a different decision in respect of the investments within their pension if the firm had given suitable advice;
- (d) the **client** would not have taken the action they took if the firm had taken all of the relevant steps in the **insistent client** process; or
- (e) the **client** would not have taken the action they took if the firm had given compliant disclosure in respect of its advice.

7 Results and feedback tab

- 7.1 This tab collates and summarises the individual ratings for each element that you are testing as part of the file review. This is done automatically by the **template**, based on how the assessor has completed earlier parts of the **template**.
- 7.2 It prompts the file review assessor to draft the feedback that they will be sending out to the firm.
- 7.3 The main actions required of assessors in this tab are:
- (a) To check and ensure they agree with the ratings for each element of the review. If the assessor disagrees with any element, they should go back to the relevant tab and adjust how they have completed it there.
 - (b) Draft the feedback to the firm based using the boxes provided.
 - (c) Include references to the FCA Handbook rules and guidance that you have relied on when making your assessment.

Feedback boxes

- 7.4 There are six boxes for writing your feedback. What should be put into each box and when it should be completed is summarised in the table below:

Feedback box	When to complete	What to include
Case summary	In all cases	A brief summary of the client's circumstances, financial situation and their objectives for the pension transfer . This is for background/context purposes and should not include your opinion on other areas, such as suitability, as these are covered in the boxes below.
Information Obtained	When the information obtained is "non-compliant"	Information on the necessary information that is missing. You should also include reference to the specific rules breached.
Suitability – Pension transfer	When the personal recommendation is not suitable	An explanation of why you consider the personal recommendation is unsuitable with reference to the relevant examples and COBS rule(s). This explanation should reference the supporting evidence on file.

Suitability – Investment advice	When the personal recommendation is not suitable	An explanation of why you consider the personal recommendation is unsuitable with reference to the relevant examples and COBS rule(s). This explanation should reference the supporting evidence on file.
Insistent client	When the insistent client process is “non-compliant”	An explanation of why you consider the firm has failed to meet the regulatory expectations regarding the insistent client process with reference to the specific rule(s) and guidance. This explanation should reference the supporting evidence on file.
Disclosure	When the firm’s disclosure is “non-compliant”	An explanation of why you consider the disclosure for the case does not comply with the FCA rules. You should reference the specific disclosure element(s) and rule(s). This explanation should reference the supporting evidence on file.