

Proposed changes to our pension transfer rules

Feedback on CP15/7 and final rules

June 2015



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In this Policy Statement we report on the main issues arising from Consultation Paper 15/7 *Proposed changes to our pension transfer rules* and publish the final rules.

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Abbreviations used in this paper

CBA	Cost benefit analysis
CETV	Cash equivalent transfer value
CII	Chartered Insurance Institute
COBS	Conduct of Business Sourcebook
DB	Defined benefit
DC	Defined contribution
FRN	Firm Reference Number
FSMA	Financial Services and Markets Act 2000
GAR	Guaranteed annuity rate
IA	Impact assessment
PERG	Perimeter Guidance Manual
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
UFPLS	Uncrystallised funds pension lump sum

1. Overview

Introduction

- 1.1** In March we consulted on proposed changes to our rules regarding pension transfers which will be necessary following an amendment to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). This amendment makes advising on the conversion or transfer of safeguarded pension benefits into flexible benefits a regulated activity.
- 1.2** We also consulted on related changes to ensure that our Conduct of Business Sourcebook (COBS) pension transfer requirements will apply to all pension transfers, regardless of when the transferred benefits are being accessed – ‘crystallised’.

Who does this affect?

- 1.3** This Policy Statement will primarily be of interest to financial advisory firms advising on pension transfers and pension providers transferring or receiving pension benefits. It may also be of interest to employer sponsors of defined benefit (DB) schemes and employee benefit consultancies.

Is this of interest to consumers?

- 1.4** This Policy Statement is likely to be of interest to retail consumers seeking to transfer benefits from DB schemes, or from pension policies with Guaranteed Annuity Rates (GARs), to defined contribution (DC) arrangements and consumer groups representing them.

Context

- 1.5** Since April 2015, the Government’s new flexible pension regime has allowed DC pension schemes to offer pension savers aged 55 and over immediate access to their pension savings. Members of DB schemes do not have this flexibility. Therefore, to protect consumers who might otherwise lose valuable DB benefits, the Government has:
- amended the RAO to make advising on conversions or transfers of safeguarded benefits to flexible benefits a specified activity, and

- introduced a requirement that individual scheme members take advice from an adviser authorised by the Financial Conduct Authority (FCA) before a transfer is allowed to proceed
- 1.6** The amendment to the RAO brings advice on transfers from DB schemes to occupational DC schemes within our remit and we need to incorporate the new specified activity within our rules.
- 1.7** More broadly, the legislation refers to transfers of ‘safeguarded benefits’, which are primarily benefits in DB schemes but may also be benefits such as guarantees or other promises in other types of scheme.¹
- 1.8** A related issue is when the advice of a Pension Transfer Specialist is required for pension transfers. Our rules currently require that advice on pension transfers must be provided by, or checked by, a Pension Transfer Specialist. Firms wishing to provide advice on pension transfers and pension opt outs must apply for and obtain special permission to carry out that activity.
- 1.9** However, in 2011, the FSA issued a factsheet for financial advisers: ‘Pension transfers – who can do what and when?’.² That document indicated that the requirement for a Pension Transfer Specialist did not apply where there was evidence that the transfer was for the purpose of crystallising benefits.
- 1.10** The Government’s new flexible pension regime is expected to lead to an increase in demand from those with DB assets to transfer in order to take advantage of these flexibilities. CP15/7 therefore proposed requiring the Pension Transfer Specialist qualification for advice on all transfers from DB schemes to DC arrangements, regardless of when the transferred benefits are being crystallised.

Summary of feedback and our response

- 1.11** We received 57 responses to our consultation from a variety of stakeholders, including consumer groups, trade bodies, firms, professional bodies and consultancies.
- 1.12** We are grateful for the feedback received and want to take this opportunity to thank all those who responded. We have considered carefully the responses that we received before deciding on our policy approach and final rules.
- 1.13** Respondents were generally positive about our proposals and we have proceeded with most of the proposed rule changes with a small number of amendments, covered in more detail later in this paper.
- 1.14** Respondents also raised a number of issues that are outside the scope of this consultation. Four particular issues predominated:
- insistent clients
 - safeguarded benefits

¹ Guaranteed growth rates, guaranteed death benefits, mortality and morbidity guarantees, etc.

² www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/pension_transfers.pdf

- our Handbook rules relating to preparing and providing a Transfer Value Analysis (TVA),³ and
- overseas residents and the requirement to take advice

1.15 These issues are not addressed in the following chapters, but we indicate below how they will, separately, be taken forward.

Insistent Clients

1.16 Given the pension reforms introduced in April 2015 we have today published a factsheet which provides a helpful reminder of our position on insistent clients. It includes questions and answers alongside examples of good and poor practice.

Safeguarded benefits

1.17 A number of respondents expressed their disappointment that the legislation defines safeguarded benefits in the negative and asked that we and the Department for Work and Pensions (DWP) produce guidance as to the types of benefits that fall within the definition.

1.18 We have raised this issue with the DWP. They have confirmed that they will work with us and engage with the pensions industry, over the coming months as the new pension flexibilities bed in, with a view to publishing broad categories/themes to help providers identify safeguarded benefits and apply the advice requirement.

Transfer Value Analysis (TVA)

1.19 Later this year, as part of our broader review of our Handbook pension rules, we will consider whether there is a need for a full review of our TVA requirements. We appreciate that the requirements were established when the only option within a contract-based pension scheme was to purchase an annuity. We are keen to explore the options for reviewing the TVA methodology in light of pension flexibilities and will seek input from stakeholders on this process.

Overseas residents

1.20 DWP legislation requires trustees and managers to check that the scheme member has received advice from an FCA-authorized adviser before transferring pension benefits where there are safeguarded benefits of more than £30,000. There is no exception for non-UK residents.

1.21 In practice, this means that a non-UK resident seeking to transfer pension benefits overseas will need to seek advice from an FCA-authorized adviser on the implications of proceeding with the transfer. As FCA-authorized advisers are unlikely to know the local tax regime or pension rules, non-UK residents seeking to transfer pension benefits will be likely to need to seek advice from both an FCA-authorized adviser and a local (overseas) adviser.

1.22 We have raised this issue, and the potential difficulties and costs it imposes on non-UK residents, with the DWP. The DWP has confirmed that it will work with us and engage with the pensions industry to consider whether amendments are needed to ensure that the advice requirement operates as intended for non-UK residents.

³ COBS 19.1 Pension transfers and opt-outs

Next steps

What do you need to do next?

- 1.23** The new rules described in this Policy Statement will come into force on 8 June 2015. Financial advisory firms advising on pension transfers, pension providers transferring or receiving pension benefits and employer sponsors of occupational schemes must make any changes necessary to comply with the rules.

Equality and diversity considerations

- 1.24** Our initial assessment – as set out in CP15/7 – was that our proposals did not raise any concerns with regard to equality and diversity issues. We welcomed any input that respondents had on this issue.
- 1.25** We did not receive any comments during the consultation process that contradicted our initial assessment.

2. Advice on the conversion or transfer of pension benefits

- 2.1** In this chapter we summarise and respond to the feedback received to the proposed changes to our Handbook rules set out in CP15/7 relating to the extension of our regulatory remit to include the new specified activity of advising on conversions or transfers of safeguarded to flexible benefits.

Feedback and our response

Amendment to the RAO

- 2.2** In CP15/7 we explained that the proposed amendment to the RAO, which is now in force, would introduce a new article, Article 53E,⁴ for the new specified activity of advising on conversion or transfer of pension benefits. This new specified activity mirrors the advice requirement in the Pension Schemes Act 2015.
- 2.3** We went on to explain that our proposed approach was to focus on those changes we considered necessary to bring the new specified activity under Article 53E within our rules.

Adviser qualification

- 2.4** In CP15/7 we considered whether we should specify the standard of advice required for some or all aspects of the new specified activity. We proposed requiring that the advice be provided by, or checked by, a Pension Transfer Specialist, except where that advice relates to conversions or transfers in respect of pension policies with a GAR.

Q1: *Do you agree that, in general, we should require that advice under the new specified activity be provided by, or checked by, a Pension Transfer Specialist?*

- 2.5** More than two-thirds of the 57 respondents expressed support for our proposal. Most of the remaining respondents offered no comments.
- 2.6** A small number of respondents expressed some opposition. Their reasons mainly related to specific instances where they believed that the advice can safely be provided by advisers who are not Pension Transfer Specialists – e.g. between DC schemes, at retirement and where the transfer is for the purpose of crystallising benefits.
- 2.7** More generally, a number of respondents expressed broader concerns or asked for further clarity in relation to our proposals or related issues.

⁴ www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf

- 2.8** Some respondents were concerned about the relative expense of obtaining advice from a Pension Transfer Specialist where the value of the benefits to be transferred is small. In some cases they pointed out that the new legislation only requires transferring schemes to check that a member has received appropriate independent advice where the value of the member's safeguarded benefits exceeds £30,000. Attendant concerns related to a shortage of available resource within the market to support customer demand.
- 2.9** More granular queries and concerns included:
- clarity as to the meaning of the word 'independent' in the context of the advice to be provided
 - a request that the examinations syllabus for Pension Transfer Specialists be reviewed, in the light of the pension reforms, and
 - the need to have a requirement for advisers to provide confirmation that advice has been provided

Our response

We are pleased that more than two-thirds of all respondents expressed their support for our proposal.

We acknowledge the concern of some respondents that advice from a Pension Transfer Specialist may cost more and that this may be unnecessary expense, in their view, where the value of the benefits to be transferred is small. However, we consider that where advice is provided, the adviser must be competent to give such advice. Moreover, there is no requirement for advice if the benefits to be transferred are not safeguarded or if the safeguarded benefits are £30,000 or less.

On the meaning of the word 'independent,' DWP have confirmed that, while advice has to be provided by an adviser who is independent of the employer or trustees/manager of a scheme, it can be provided by an adviser who operates on either an independent or restricted advice basis.

At this stage we do not believe that a review of the examination syllabus by the FCA is necessary. Examining bodies regularly review the content of their examinations and ensure that they remain up to date with practitioners' needs. Inevitably, the new flexibilities will require us to update the FCA's exam standards, but we will do this once we have a greater understanding of how the market has changed.

New secondary regulations⁵ already require trustees and managers of schemes to inform a member seeking to transfer that the member must provide a letter within three months confirming that they have taken advice. We would expect advisory firms to take notice of this three month requirement. We do not see the need to impose additional requirements on advisory firms in this regard.

⁵ The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015; www.legislation.gov.uk/ukksi/2015/742/pdfs/ukxi_20150742_en.pdf

Pension transfer definition

- 2.10** In CP15/7 we explained that our current requirement for a Pension Transfer Specialist to provide or check the advice provided hinges on a transaction being defined as a pension transfer in our rules.
- 2.11** That is, our existing definition of a pension transfer includes transfers from occupational schemes to personal pension or stakeholder pension schemes. Where a transaction is not within our definition of pension transfer, but involves moving pension benefits from one scheme to another scheme of the same type, we refer to it as ‘pension switching’.
- 2.12** We proposed incorporating the transfer aspect of the new specified activity by adding the relevant part of Article 53E to our existing definition of ‘pension transfer’ in our Handbook glossary. This included adding definitions for ‘safeguarded benefits’ and ‘flexible benefits’ that mirror the definitions in Article 53E.
- 2.13** We also proposed requiring a transfer value analysis for advice on all transfers of safeguarded benefits (excepting GARs) to flexible benefits, including advice on transfers from DB to occupational DC schemes, just as we require it for advice on transfers from DB to personal pension and stakeholder pension schemes.

Q2: *Do you have any comments on the proposed new definition of pension transfer and subsequent requirements?*

- 2.14** A clear majority of respondents either indicated their approval of the new definition or offered no comment.
- 2.15** The remaining respondents expressed a number of concerns, primarily around which benefits might be regarded as safeguarded benefits, but also in relation to the use of a Transfer Value Analysis System (TVAS) when consumers are seeking to access their pension assets under the new pension freedoms.

Our response

We are pleased that a clear majority of respondents either indicated their approval of the new definition or offered no comment.

As noted earlier in this paper, the DWP have confirmed that they will work with us and engage with the pensions industry, over the coming months as the new pension flexibilities bed in, with a view to publishing broad categories/themes to help providers identify safeguarded benefits and applying the advice requirement.

We will consider our TVAS methodology in the light of the pension reforms. If we consider it necessary, we will carry out a full review of the methodology and consult on any proposed changes.

Q3: *For future consideration, do you have views on whether or not we should continue to include transfers from occupational DC schemes without safeguards in our definition of pension transfer?*

- 2.16** Many respondents indicated that they thought we should not continue to include transfers from occupational DC schemes without safeguarded benefits within our definition of a pension transfer.
- 2.17** Some respondents felt that the nature of the transaction does not require or justify the involvement of a Pension Transfer Specialist. They expressed a concern that the existing requirement could lead to poor outcomes, e.g. increasing barriers to clients shopping around, the demand for Pension Transfer Specialist services if these transfers are included will be extremely high, etc.
- 2.18** Other respondents believed that we should continue to include these transfers in our definition, for consistency of approach and because they believed that Pension Transfer Specialists are more likely to identify the range of issues that may need to be considered.

Our response

We have considered carefully whether or not a Pension Transfer Specialist should be required for advice on transfers from occupational DC schemes without safeguards.

We agree that there is little difference between advising on transfers from occupational DC schemes without safeguards and advising on switches between personal pensions without safeguards. In both situations a transfer value analysis would be meaningless and is not required.

Therefore, we intend to introduce an exception to the application of our rules on pension transfers and opt-outs⁶ for advice on transfers from occupational schemes without safeguards. An adviser must still have the appropriate permission to advise, but there would be no requirement for a Pension Transfer Specialist for advice on such transfers.

We would expect all advisers qualified to advise on investment products to be alert to the possibility of investment scams.

Pension conversion definition

- 2.19** In CP15/7 we proposed to introduce a new defined term – ‘pension conversion’ – into our Handbook glossary to cover pension conversions for safeguarded benefits. We proposed that this new definition should follow the terminology used in Article 53E such that it includes:
- conversion of safeguarded benefits into flexible benefits within the same scheme, and
 - payment of an Uncrystallised Funds Pension Lump Sum (UFPLS) in respect of safeguarded benefits⁷
- 2.20** We also proposed to amend our rules on pension transfers and opt-outs to include pension conversions. This will have the effect of requiring that advice on pension conversions must be provided by, or checked by, a Pension Transfer Specialist. We consider that pension conversions

⁶ COBS 19.1; <http://fshandbook.info/FS/html/FCA/COBS/19/1>

⁷ The payment of an UFPLS does not constitute a conversion in DWP legislation but is included in Article 53E for the payment of an UFPLS in respect of safeguarded benefits, in effect a conversion to cash

require the expertise of a Pension Transfer Specialist to assess the value of the safeguarded benefits that would be lost.

- 2.21** We further proposed that a transfer value analysis should be carried out for pension conversions, including when the client seeks immediate access to their pension savings. This is because the transfer value analysis will help illustrate to the client the value of the guaranteed benefits that they would be giving up.

Q4: *Do you have any comments on the proposed new definition of pension conversion and subsequent requirements?*

- 2.22** Nearly half of all respondents offered no comments on our proposal.

- 2.23** Those respondents that did provide comments were broadly supportive of our proposals, albeit with some significant exceptions. These included:

- that there be no requirement for a Pension Transfer Specialist if the purpose of the conversion is for immediate vesting
- clarification of whether using a policy with a GAR to purchase an annuity counts as a conversion, and
- that the conversion of safeguarded benefits into flexible benefits within the same scheme be included in the definition of 'pension conversion'

Our response

We intend to proceed with our proposal to follow the terminology in Article 53E for our definition of pension conversion.

We have considered the need for a Pension Transfer Specialist if the purpose of the conversion is to obtain immediate access to pension assets. While the value of the funds for vesting may be known, it may be complex to assess the value of the safeguarded benefits being given up. Therefore, we will require a Pension Transfer Specialist even if the purpose of the conversion is to obtain immediate access to pension assets.

We can clarify, again following discussion with the DWP, that the purchase of an annuity with safeguarded benefits does not constitute a conversion under the legislation.

However, the exchange of safeguarded benefits for flexible benefits within the same scheme does constitute a conversion as defined and so advice is required where the value of the safeguarded benefits is greater than £30,000. Furthermore, any UFPLS payments from a fund with safeguarded benefits will also be considered a conversion for the purposes of our rules and advice is required where the value of the safeguarded benefits is greater than £30,000.

Guaranteed annuity rates

- 2.24** The Government's policy intent was that policies with a GAR fall within the definition of safeguarded benefits.
- 2.25** In CP15/7 we proposed to exclude the conversion or transfer of benefits from pension policies with a GAR from the requirement for a Pension Transfer Specialist within our COBS rules on pension transfers and opt outs.

Q5: *Do you agree that we should not require a Pension Transfer Specialist for advice on the conversion or transfer of benefits from pension policies with a GAR?*

- 2.26** Nearly half of all respondents positively supported our proposal and a third of the remainder offered no comments.
- 2.27** Most of those supporting the proposal considered that the process of advising on GARs was far less complex than that of advising on a transfer from a DB scheme and did not warrant our requiring that a Pension Transfer Specialist provide or check the advice.
- 2.28** Those respondents who did not agree felt that the Pension Transfer Specialist qualification should be required, usually for reasons of consistency with similar types of transaction.
- 2.29** Specific concerns raised centred around:
- clarity as to how providers should assess benefits with a GAR against the £30,000 threshold for the advice requirement
 - concerns in relation to the pension content of the current Level 4 knowledge requirement
 - the need for firms to hold the transfer permission for this type of activity
 - personal arrangements containing a Guaranteed Minimum Pension (GMP) should also be exempt from this requirement, and
 - clarity on the position where the GAR is contained in an insurance policy

Our response

We intend to proceed with our proposal that the conversion or transfer of benefits from pension policies with a GAR should not require the involvement of a Pension Transfer Specialist.

We have not previously required a Pension Transfer Specialist for advice on transfers of benefits in respect of pension policies with a GAR. No new evidence has been submitted to suggest that we should change that position.

It is important to note that the new requirement for advice from an FCA-authorized adviser, which applies to policies with GARs as well as to other safeguarded benefits, is a statutory requirement and not a consequence of our rules. Our rules apply if advice is provided and specify who must provide the advice.

We consider that the factors to be considered in giving up a GAR are less complex than the range of benefits to be assessed under a DB scheme and do not require a transfer value analysis. The suitability assessment must anyway consider the value of the GAR that would be lost.

A number of respondents asked whether providers should attempt to value the GAR for the purpose of determining whether the exemption from the advice requirement applies. The DWP have confirmed that, where benefits include a GAR, the calculation of the value of the benefits must take into account the value of the GAR.

Providers may wish to determine broad values in relation to the types of GARs held by their members, to assist in determining whether the exemption is likely to apply in cases where the realisable assets under the member's policy do not exceed £30,000. Where this approach produces a figure close to the £30,000 threshold, providers may need to calculate the value of the individual member's benefits, in accordance with the regulations, to determine whether the member will be required to take independent advice.⁸

We acknowledge concerns that current qualifications for advisers who are not Pension Transfer Specialists lack sufficient detail on pensions. To the extent that such advisers are advising on pension issues, including decumulation issues, we expect them to be competent to do so. Some respondents questioned the need for firms to hold the transfer permission for this type of activity. We address this in the next section.

We have considered whether advice on transfers from personal pension arrangements containing GMPs and other safeguarded benefits should be exempt from the requirement for a Pension Transfer Specialist. At this time, we will not exclude such activity from the requirement for a Pension Transfer Specialist. This is because the benefits may replicate or otherwise correspond to benefits under a DB scheme and may be more complex to assess.

A small number of respondents sought clarity on the position where a GAR is contained in an insurance policy. We have raised this issue with the DWP. There may be certain very specific scheme structures under which benefits with a GAR may, exceptionally, fall within the definition of 'money purchase benefits' (in section 181 and 181B of the Pension Schemes Act 1993) and so will not be safeguarded benefits.

For example, this could be where an occupational pension scheme holds a policy with an insurance company under which the GAR is guaranteed to the member, and the only promise made under the scheme rules is that the member's benefits will be the benefits provided by the policy.⁹

However, each case will have to be considered by the relevant firm so that the firm can decide how the legislative definitions apply to the benefits in question.

8 The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015; www.legislation.gov.uk/uksi/2015/742/pdfs/uksi_20150742_en.pdf. These regulations provide that the total value of the member's subsisting rights in respect of safeguarded benefits must be calculated using the cash equivalent calculation method contained within regulations 7 to 7C or 7E of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

9 Section 181B(2) of the 1993 Act requires that money purchase benefits are calculated solely by reference to assets which must necessarily suffice for the purposes of their provision.

Permissions and grandfathering firms

- 2.30** In CP15/7 we expressed our view that all firms that currently have permission for advising on pension transfers and pension opt outs should be competent to advise on conversions and transfers of safeguarded benefits to flexible benefits.
- 2.31** We added that we had sought additional legislation to enable the automatic 'grandfathering' of firms with the existing permission.

Q6: *Do you have any comments on our proposed approach to permissions and grandfathering firms?*

- 2.32** All respondents were supportive of the general approach we proposed.
- 2.33** Concerns mainly related to the need for further clarity on roles and responsibilities of the ceding scheme, receiving scheme and adviser in the process and expectations of the 'check' to be undertaken.
- 2.34** Other concerns related to the 'user friendliness' of our Register in allowing clients and advisers to check permissions held, particularly in light of the requirement for DB trustees to confirm that appropriate advice has been received,
- 2.35** Concerns were also raised in relation to the (implicit) inclusion of GARs within the pension transfer definition and the consequent implication that permission will be required to advise on GARs, even though these are excluded from the application of the rules in COBS 19.1.
- 2.36** Finally, respondents suggested that firms with existing investment adviser permissions should be grandfathered to provide advice on pension freedoms where the client is immediately crystallising their benefits. Also that, in extending the current permission to include pension conversions, we should not limit this permission to cover only the existing activity or the new activity.

Our response

We are pleased to report that additional legislation was introduced to enable the automatic grandfathering of firms with the existing permission. Firms that had the existing permission as of 6 April 2015 now have the permission for 'advising on the conversion or transfer of pension benefits'.

For our Register, we have not introduced a separate permission for 'advising on the conversion or transfer of pension benefits.' Instead, the existing permission for 'advising on pension transfers and pension opt-outs' will encompass the new regulated activity. Firms must have this permission to carry on the new regulated activity.

A number of respondents sought further clarity on the roles and responsibilities of the ceding scheme, receiving scheme and adviser in the transfer process. The secondary regulations¹⁰ associated with the Pensions Schemes Act 2015 and guidance from the Pensions Regulator¹¹ already prescribe what the

¹⁰ The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 www.legislation.gov.uk/uksi/2015/742/pdfs/uksi_20150742_en.pdf

¹¹ DB to DC Transfers and Conversions www.thepensionsregulator.gov.uk/guidance/db-to-dc-transfers-and-conversions.aspx

trustees or managers of the ceding scheme must do to ensure that appropriate independent advice has been taken. This includes a requirement to inform the member that a letter from the adviser confirming that advice has been taken must be provided by the member to the trustees or manager before the end of a three month period beginning with the day on which a statement of entitlement is provided.¹²

We would expect firms providing advice on a pension transfer to take into account the regulatory requirements, including that confirmation must be provided by the member to the trustees or manager within three months for the transfer to proceed. We do not intend to duplicate these requirements in our rules. We will add guidance to our rules that we would expect advisory firms to provide the letter of confirmation as soon as reasonably practicable.

With regards to the receiving scheme, providers of personal pension schemes must operate in accordance with FCA rules. This includes consideration of the appropriateness of their products for consumers seeking to transfer into them. We do not regulate trustees of occupational pension schemes.

Some respondents questioned the ‘user friendliness’ of our Register in allowing clients and advisers to check permissions held. Our Register is designed so that users can check the permissions held by a firm within a small number of clicks. We are in the process of considering a number of improvements to our current Register to enhance the search functionality and provide a cleaner layout and design.

Historically, firms without the pension transfer permission could advise on policies with GARs. While in our rules we will exclude advising on policies where GARs are the only safeguarded benefit from the requirement for a Pension Transfer Specialist, firms will now need the pension transfer permission. This is a consequence of the amendment to the RAO and not our rules. Where firms only seek the permission for the purpose of advising on policies where GARs are the only safeguarded benefit, we would consider granting a permission with a limitation to this effect.

Some respondents suggested that firms with the existing permission for advising on retail investment products should be grandfathered to provide advice on pension conversions or transfers where the client is immediately crystallising their benefits. We do not believe that this would be appropriate. This is because we consider that the expertise of a Pension Transfer Specialist is needed to assess and provide advice on the value of the safeguarded benefits, regardless of whether or not the client is immediately crystallising their benefits.

¹² Where a statement of entitlement is not provided, alternate provisions apply

3.

Pension transfers for the purpose of crystallising benefits

- 3.1** In CP15/7 we noted that, from April 2015, individuals aged 55 and over would be able to withdraw savings from their DC pensions as they wish, subject to their marginal rate of income tax.
- 3.2** We argued that this greater variety of options for accessing pension wealth would increase the complexity of comparing the long-term outcomes of a transfer from a DB scheme to a DC arrangement. We, therefore, concluded that the position set out in our 2011 factsheet no longer provides an adequate level of consumer protection and we proposed changing our COBS rules to require that all pension transfer advice is provided by, or checked by, a Pension Transfer Specialist.

Q7: *Do you agree with our proposal that all advice on DB to DC pension transfers – including any provided for the purpose of crystallising the benefits being transferred – must be carried out or checked by a Pension Transfer Specialist?*

- 3.3** The vast majority of respondents agreed with our proposal – many citing the greater complexity in advising on pension transfers resulting from the changes announced in the 2014 Budget.
- 3.4** Some respondents disagreed with our proposal, believing that any risks resulting from the greater complexity can be addressed by individuals with the investment advice permission, a more narrowly focussed ‘at retirement’ qualification or systems and controls.
- 3.5** While supporting the broad thrust of our proposal, a number of respondents expressed specific concerns around a potential shortfall in suitably qualified advisers and attendant issues around access to and the cost of advice.

Our response

We are pleased that the vast majority of respondents agreed with our proposal.

We appreciate that a number of respondents felt that the increase in the complexity of comparing the long-term outcomes of a transfer from a DB scheme to a DC arrangement did not merit our requiring that the advice be carried out or checked by a Pension Transfer Specialist. However, we do not believe that the alternative approaches suggested will ensure that individuals advising on pension transfers will be able to evaluate the complex needs of clients and recommend appropriate solutions.

Our final rules remove the requirement for a Transfer Value Analysis (TVA) where immediate benefit crystallisation happens at the DB scheme's normal retirement age (NRA) as we do not believe that this comparison provides information that will be on use to the consumer. A TVA will still be required to NRA if immediate benefit crystallisation happens before NRA.

Cost benefit analysis

- 3.6** We provided a CBA in support of our proposal in Annex 1 of CP15/7. We summarised the costs and benefits as follows:

Summary of costs and benefits

	One-off	Ongoing (annual)
Benefits (scenario-based)		£5-10m
Costs	£340,000	

Q8: Do you have any comments on our cost benefit analysis?

- 3.7** Most respondents offered comments in relation to the assumptions we used in completing our analysis and the subsequent estimates of impacts.
- 3.8** The assumptions in relation to the time needed to advise on a pension transfer and the costs of acquiring the qualification attracted most comments, with the additional number of advisers required and the number of potential transfers from DB to DC pensions also featuring in a number of responses.
- 3.9** Several respondents stated that the Treasury assumption that 7.5 hours are needed for advice on one transfer and our estimate of the opportunity cost of time needed to study for qualifications appeared too low. Some respondents felt that these figures should be increased by a factor of 2 to 4. In some cases respondents stated that these estimates were based on their personal experience or that of their employer.
- 3.10** Some respondents felt that the estimates did not adequately account for Pension Transfer Specialists spending some of their time on non-advice services. There is also likely to be some geographical dispersion of where advice is demanded and where advisers are located. While no detailed proposals were made on how to account for this, respondents felt that some provision should be made.
- 3.11** A small number of respondents questioned whether there might be further costs of implementing the framework in which the additional Pension Transfer Specialists would operate, e.g. T&C, supervisory and management oversight, etc.
- 3.12** There was a further argument made that the CBA did not adequately capture the incremental cost of Transfer Value Analysis (TVA).
- 3.13** A number of respondents also felt that we had underestimated the number of potential transfers from DB to DC schemes and that this meant that our estimate of the number of additional advisers required was too low. Some of these respondents also felt that it was likely that the existing population of advisers qualified as Pension Transfer Specialists, estimated at around 7,000 in the CBA, contains a number of inactive individuals, increasing the need for additional advisers.

- 3.14** A number of respondents expressed concerns that the issues identified above would lead to increases in the cost of advice or a lack of supply of advice.

Our response

Revising our one-off cost estimates

We had based our one-off cost estimates on data available at the time of the original analysis. We continue to think that many of the assumptions used then were valid. However, given the range of responses we acknowledge that one-off costs could be higher than estimated in the original CBA. We present therefore a higher end estimate of one-off costs, and assumptions behind this.

- We had assumed that 7.5 hours of advice are needed for each transfer. This was based on the Treasury's estimates, corroborated by a survey conducted by the Association of Professional Financial Advisers (APFA) on the Treasury's behalf. We assume here for the purposes of the higher end estimate though that the time needed on each transfer might be double this.
- We had assumed the opportunity cost of each hour of an adviser's time while preparing for qualifications was £29. This was based on the estimates of NMG Consulting in *The cost of implementing the Retail Distribution Review professionalism policy changes* (June 2010). It is important to recognise that, while these costs imply foregoing other things of value that might be done with the time spent preparing for qualifications, this is not equal to the cost of advice (the most valuable thing an adviser is assumed to do).¹³ We assume here for the purposes of the higher end estimate though that the opportunity cost of time might be double the number used in our original estimate.
- We had assumed that additional Pension Transfer Specialists would spend nearly all of their time providing advice and implicitly that there would be a match between those who needed advice and those providing it. Because Pension Transfer Specialists would spend part of their time on non-advice activities and because geographical and firm dispersion would mean less than perfect matching, we now assume that 1.5 Pension Transfer Specialists will be required in the market for every additional Pension Transfer Specialist needed if perfect matching was possible.
- We had not estimated further compliance costs for e.g. those related to training or updating procedures. We think that these are not likely to be truly incremental, given the complete range of changes going on in the pensions market which firms would have to make changes for anyway, and are likely to be significantly smaller than the additional Pension Transfer Specialist costs. We have consequently not calculated these for the higher end estimate either.

These revised assumptions indicate the potential need for approximately 130 additional Pension Transfer Specialists (compared with 45 estimated in the original CBA). Applying the higher opportunity cost assumption, we calculate total one-off costs of around £1.6m (compared to £340,000 estimated in the original CBA).

¹³ This may also involve, in part, an employee's non-remunerated time outside work as well.

We think that actual one-off costs are likely to fall somewhere between the estimate in our original CBA and the higher end estimate presented here.

Revising our on-going cost estimates

We did not calculate any significant on-going costs in the original CBA. This was in part because these could in economic terms be thought of broadly as transfers (from individuals needing advice to firms providing it), rather than truly incremental costs. However, given the argument raised that our CBA in particular did not adequately capture the incremental cost of TVAs, we have reconsidered this position and present here an updated estimate of on-going costs.

- We had estimated a potential 35,000 individuals would require advice each year which, according to our proposals, would have to be provided or signed off by a Pension Transfer Specialist. We had assumed that even in the absence of our proposal it is likely that a significant portion (75% of cases) of such advice or sign-off would be provided by Pension Transfer Specialists. Maintaining this assumption for current use of TVA, indicates our proposals might lead to a further 8,750 cases annually requiring TVA.
- We are further removing the requirement for a TVA where immediate benefit crystallisation happens at the DB scheme's normal retirement age (NRA). We think it is reasonable to assume that 20% of the 8750 potential transfers identified will represent immediate crystallisation at NRA,¹⁴ which would leave 7000 cases where our proposals lead incrementally to TVAs,
- Our desk-based research suggests the cost of a TVA is generally in the range of £200 to £250. Adding in a further buffer for incremental cost of advice that our proposal may lead to, we make the conservative assumption that the total incremental cost per case is around £350,

Using these assumptions we estimate, that across the total population, incremental on-going costs might be around £2.5m per year. It is important to note that on the other side of the equation this also leads to a £2.5m increase in revenues for firms providing advice and TVA services. The cost does not in its entirety fall on individuals seeking advice. In particular a number of the transfers identified may result from exercises sponsored by employers where they would meet the cost of the TVA. The Treasury's Impact Assessment indicates this may be true for about 19% of all such transfers.

Total number of potential transfers and short term pressures

Some respondents felt that we had underestimated the number of potential transfers from DB to DC schemes and, consequently, the number of additional advisers required. However, none of these respondents presented data in support of this argument. We acknowledge that there is a significant degree of uncertainty as to how the market will develop once the new freedoms are in place. However, we think our estimates, based primarily on the in-depth analysis Treasury conducted, are as credible as any pre-change scenario. Additionally, it is important to realise that were potential transfers greater than the original estimate this would mean not only increased costs but also increased benefits.

¹⁴ This assumes that the population of affected DB scheme members is evenly distributed across the 55+ age band.

Some respondents misinterpreted the number (7022) we presented from the Chartered Insurance Institute (CII) of individuals with appropriate Pension Transfer Specialist qualifications (Unit AF3 of the Advanced Diploma in Financial Planning). We did not assume in our analysis that all individuals with qualifications were active in the market. Rather the figure was simply meant to make the argument that this dwarfed the number of additional Pension Transfer Specialists estimated to be needed as a consequence of our proposals. This indicated (and continues to indicate) that pressures created in the short term by increased demand, while further Pension Transfer Specialists complete their qualifications, is not likely to be excessive. Further to those qualifying through the CII we note Pension Transfer Specialists may qualify by other routes as well, as permitted by our T&C requirements, for e.g. the Faculty and Institute of Actuaries, indicating a larger population of individuals with the appropriate qualifications (than noted in the original CBA). We acknowledge though that it is difficult to estimate the activity level of this population as a whole.

Revising our overall CBA summary

Given the revised estimates of impacts made in this Policy Statement, we present a revised summary of our overall CBA here:

Summary of costs and benefits

	One-off	Ongoing (annual)
Benefits (scenario-based)		£5-10m
Costs for firms	£500,000 ¹⁵ - £1.6m	
Transfers to firms providing advice (incremental revenue)		£2.5m
Transfer from individuals (and employers) ¹⁶		£2.5m

¹⁵ The lower bound estimate maintains the calculation made in the original CBA, but updates this solely with the revised assumption around Pension Transfer Specialists spending additional time on non-advice tasks and imperfect matching

¹⁶ The two transfers described are of similar amounts in broad economic terms. Strictly speaking, differences in utility functions and because the actual gains for firms are additional profits rather than revenues, the two transfers may not directly cancel each other out.

Annex 1

List of non-confidential respondents

Aegon Investment Solutions Ltd + Scottish Equitable

Age Partnerships

Association of British Insurers

Association of Professional Compliance Consultants

Association of Professional Financial Advisers

Steve Baker

Bluesky Wealth Management

Capita Life & Pensions Regulated Services

Mike Cole

Creative Benefit Wealth Management Ltd

Heather Dunne

FCA Smaller Business Practitioner Panel

Financial Escape Ltd

Financial Services Consumer Panel

Robert Goodman

Hellier Independent Financial Services Ltd

Bryan J Hollingsworth

Michael Hudson

Institute of Chartered Accountants in England and Wales

Institute and Faculty of Actuaries

Intelligent Pensions

LV=

Lyfords Financial Advisers
Mazars Financial Planning Ltd
Move My Pension Ltd
National Association of Pension Funds
O&M Pension Solutions Ltd
Brian O'Sullivan/Plastic Omnium Automotive Ltd
Parker Sage Independent Financial Advisers Ltd
Pensions Advisory Service
Personal Finance Society
Ruth Preston-Hoar
Prudential
Glyn Reeve
Kevin Render
Royal London Group
Sacker & Partners LLP
St. James's Place Group
Scottish Widows
SimplyBiz Group
Stephen Shanahan
Society of Pension Professionals
Matthew Speck
Spectrum IFA Group
Syngenta Pensions Trustee Limited
Tax Incentivised Savings Association
Tenet Group Limited
threesixty Services LLP
Towers Watson

Unidentified

Wardour Partners

Wesleyan Assurance Society

Williams Goddard Consulting Ltd

Xafinity Consulting Ltd

Appendix 1

Final rules (legal instrument)

PENSION TRANSFERS AND CONVERSIONS INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service amends the Voluntary jurisdiction provisions in Annex D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17; and
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making and amendment of the rules and standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (The FCA’s power to give guidance);
 - (4) section 137R (Financial promotion rules); and
 - (5) section 226 (Compulsory Jurisdiction).
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the Voluntary jurisdiction rules made and amended by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force on 8 June 2015.

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

Amendments to material outside the Handbook

- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Notes

- I. In Annex A to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Pension Transfers and Conversions Instrument 2015.

By order of the Board of the Financial Ombudsman Service Ltd
3 June 2015

By order of the Board of the Financial Conduct Authority
4 June 2015

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>advising on conversion or transfer of pension benefits</i>	the <i>regulated activity</i> specified in article 53E of the <i>Regulated Activities Order</i> , which is described in <i>PERG</i> 2.7.16FG.
<i>flexible benefits</i>	<p>has the meaning given in section 74 of the Pension Schemes Act 2015 which in relation to a <i>member of a pension scheme</i> or a <i>survivor of a member of a pension scheme</i> is:</p> <ul style="list-style-type: none">(a) a money purchase benefit (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); or(b) a cash balance benefit (defined in Section 75 of the Pension Schemes Act 2015); 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).
<i>guaranteed annuity rate</i>	<p>an arrangement in a pension scheme to provide benefits whereby, in defined circumstances and irrespective of the prevailing market rate for annuities when those benefits come into payment, a member is entitled to:</p> <ul style="list-style-type: none">(a) an annuity at a minimum specified rate; or(b) benefits equivalent to that annuity at that minimum specified rate.
<i>member of a pension scheme</i>	has the same meaning as it has in article 53E(2) of the <i>Regulated Activities Order</i> , which is, a member of a pension scheme within the meaning of section 1(5) of the Pension Schemes Act 1993 (and section 1(5) of the Pension Schemes (Northern Ireland) Act 1993).

- pension conversion* a transaction resulting from a decision of a *retail client* to require the trustees or managers of a pension scheme to:
- (a) convert *safeguarded benefits* into different benefits that are *flexible benefits* under that pension scheme; or
 - (b) pay an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.
- [**Note:** see article 53E(1)(c)(i) and (iii) of the *RAO*]
- safeguarded benefits* has the meaning given in section 48(8) of the Pension Schemes Act 2015 which is benefits other than money purchase benefits and cash balance benefits.
- subsisting rights* has the meaning given in section 76 of the Pension Schemes Act 2015 which is:
- (a) for a *member of a pension scheme*:
 - (i) any right which has accrued to or in respect of the member to future benefits under the scheme; or
 - (ii) any entitlement to benefits under the scheme;
 - (b) for a *survivor* of a *member of a pension scheme*, any right to future benefits, or entitlement to benefits, which the *survivor* has under the scheme in respect of the member.
- survivor* has the meaning given in section 76 of the Pension Schemes Act 2015 which, for a *member of a pension scheme*, means a *person* who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member.
- uncrystallised funds pension lump sum* has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004 which, subject to the exceptions in the Finance Act 2004, includes a lump sum that:
- (a) is paid on or after 6 April 2015 in respect of a money purchase arrangement;
 - (b) is paid when all or part of the member's lifetime allowance is available;
 - (c) is paid when the member has reached normal minimum pension age (or the ill-health condition is met);
 - (d) is not a lump sum that, for the purposes of Part 9 of ITEPA 2003 (pension income), is treated by

regulations under section 164(1)(f) and (2) of the Finance Act 2004 as a trivial commutation lump sum paid to the member; and

- (e) immediately before the member becomes entitled to it, the sums or assets that are to be used to provide it:
 - (i) represent rights of the member under the scheme that are uncrystallised rights as defined by section 212(1) and (2) of the Finance Act 2004; and
 - (ii) do not to any extent represent rights attributable to a disqualifying pension credit.

Amend the following definitions as shown.

advising on pension transfers and pension opt-outs any of the following regulated activities:

- (a) *advising on investments in respect of pension transfers and pension opt-outs (article 53);*
- (b) *advising on conversion or transfer of pension benefits (article 53E).*

designated investment business

any of the following activities, ..., which is carried on by way of business:

...

- (m) *advising on investments (article 53), but only in relation to designated investments (other than P2P agreements); for the purposes of the permission regime, this is sub-divided into includes:*

...

- (ii) ~~*advising on pension transfers and opt-outs*~~
advising on investments in respect of pensions transfers and pension opt-outs;

- (ma) *advising on conversion or transfer of pension benefits (article 53E);*

...

pension transfer

a transaction, resulting from the decision of a *retail client* who is an individual;

- (a) to transfer deferred benefits (regardless of when the *retail client* intends to crystallise such benefits) from:

~~(a)~~ ...
(i)

~~(b)~~ ...
(ii)

~~(c)~~ ...
(iii)

~~(d)~~ ...
(iv)

~~(e)~~ ...
(v)

~~(f)~~ a deferred annuity *policy*, where the eventual
(vi) benefits depend on investment performance in
the period up to the date when those benefits will
come into payment; or

(vii) a defined contribution occupational pension
scheme; or

(b) to require the trustees or manager of a pension scheme
to make a transfer payment 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

an individual appointed by a *firm* to check the suitability of a
pension transfer, pension conversion or pension opt-out who
has passed the required examinations as specified in *TC*.

personal recommendation

(except in *CONRED*) a recommendation that is *advice on
investments, advice on conversion or transfer of pension
benefits*, or *advice on a home finance transaction* and is
presented as suitable for the person to whom it is made, or is
based on a consideration of the circumstances of that person.
A recommendation is not a personal recommendation if it
issued exclusively through distribution channels or to the
public.

...

regulated activity

(in accordance with section 22 of the Act (Regulated
activities) the activities specified in Part II of the *Regulated
Activities Order* (Specified Activities) which are, in
summary:

...

(p) *advising on investments* (article 53); for the purposes of the *permission* regime, this is ~~sub-divided into~~ includes:

...

(ii) ~~*advising on pension transfers and opt-outs*~~
advising on investments in respect of pensions transfers and pension opt-outs;

(pf) *advising on conversion or transfer of pension benefits*
(article 53E);

...

retail investment activity

(a) ...

(b) *arranging (bringing about) deals in investments*; ~~or~~

(c) *making arrangements with a view to transactions in investments*; or

(d) *advising on conversion or transfer of pension benefits*;

...

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

3.8 Policies, procedures and records

...

Records

3.8.2 R ...

(3) The relevant periods are:

(a) indefinitely, in relation to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*;

...

...

4.11 Record keeping: financial promotion

4.11.1 R ...

(3) A *firm* must retain the record in relation to a *financial promotion* relating to:

(a) a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

...

...

8.1 Client agreements: designated investment business

Providing a client agreement

...

8.1.2 R If a *firm* carries on *designated investment business*, other than *advising on investments*, or *advising on conversion or transfer of pension benefits*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential

rights and obligations of the *firm* and the *client*.

...

...

Record keeping: client agreements

8.1.4 R ...

(2) The record must be maintained for at least whichever is the longer of:

...

(c) in the case of a record relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely.

...

9.4 Suitability reports

Providing a suitability report

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

...

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

...

...

9.5 Record keeping and retention periods for suitability records

...

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

(1) if relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

...

...

19.1 Pension transfers, conversions, and opt-outs

Application

- 19.1.-1 R (1) This section applies to a firm that gives advice or a personal recommendation about a pension transfer, a pension conversion or a pension opt-out.
- (2) This section does not apply to a firm that gives advice or a personal recommendation in relation to:
- (a) a pension transfer, pension conversion or pension opt-out in relation to which the only safeguarded benefit is a guaranteed annuity rate;
 - (b) a pension transfer in which the retail client proposes to transfer out of a defined contribution occupational pension scheme where that client has no safeguarded benefits under that scheme.

Preparing and providing a transfer analysis

- 19.1.1 R If an individual who is not a *pension transfer specialist* gives advice or a personal recommendation about a pension transfer, a pension conversion or pension opt-out on a *firm's* behalf, the *firm* must ensure that the recommendation or advice is checked by a *pension transfer specialist*.
- 19.1.2 R A *firm* must:
- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a *retail client* to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;
 - ...
 - (3) give the *client* a copy of the comparison, 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 *key features document* is provided; and
 - ...
- 19.1.2A R A firm need not carry out the comparison described in COBS 19.1.2R if:
- (1) the retail client wishes to crystallise benefits immediately after the pension transfer or pension conversion; and

(2) the *retail client* is at normal retirement age under the rules of the ceding scheme.

19.1.3 G In particular, the comparison should:

...

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; ~~and~~

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the *retail client's* funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the *retail client* prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* or other pension scheme with *safeguarded benefits* with the benefits afforded by a *personal pension scheme*, ~~or stakeholder pension scheme~~ or other pension scheme with *flexible benefits* (COBS 19.1.2R(1)), it must:

...

...

Suitability

19.1.6 G When advising a *retail client* who is, or is eligible to be, a member of a *defined benefits occupational pension scheme* or other scheme with *safeguarded benefits* whether to transfer, convert or opt-out, a *firm* should start by assuming that a transfer, conversion or opt-out will not be suitable. A *firm* should only then 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.

19.1.7 G When a *firm* advises a *retail client* on a *pension transfer*, *pension conversion* or *pension opt-out*, it should 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.

19.1.7A G When giving a *personal recommendation* about a *pension transfer* or *pension conversion*, a *firm* should clearly inform the *retail client* about the loss of the ~~fixed benefits~~ *safeguarded benefits* and the consequent transfer of risk from the *defined benefits pension scheme* or other scheme with *safeguarded benefits* to the *retail client*, including:

- (1) the extent to which benefits may fall short of replicating those in the *defined benefits pension scheme* or other scheme with safeguarded benefits;

...

- 19.1.7B G In considering whether to make a *personal recommendation*, a *firm* should not regard a rate of return which may replicate the benefits being given up from the *defined benefits pension scheme* or other scheme with safeguarded benefits as sufficient in itself.

...

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

- 19.1.10 G Where a *firm* has advised a *retail client* in relation to a *pension transfer*, *pension conversion* or *pension opt-out*, and the *firm* is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the *firm* should provide such confirmation as soon as reasonably practicable.

Schedule 1 Record keeping requirements

...

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
COBS 8.1.4R	<i>Client agreements</i>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or the duration of the relationship with the <i>client</i> . Record relating to a <i>pension transfer</i> , <u><i>pension conversion</i></u> , <i>pension opt-out</i> or <i>FSAVC</i> must be retained indefinitely
...				

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved persons

...

10A.10 Customer-dealing functions

...

Customer function (CF 30)

10A.10.7 R The *customer function* is the function of:

- (3) giving advice or performing related activities in connection with *pension transfers, pension conversions, or ~~opt-outs~~ pension opt-outs* for *retail clients*;

...

...

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

- (1B) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*;~~
[deleted]

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at 24 April 2015

The activities which were covered by the Compulsory Jurisdiction (at 24 April 2015) were:

- (1) for *firms*:
- (h) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*;~~ [deleted]

...

The activities which (at 24 April 2015) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

- (29B) *advising on conversion or transfer of pension benefits* (article 53E);

...

Annex E

Amendments to the Perimeter Guidance manual (PERG)

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

2.6 Specified investments: a broad outline

...

Rights under a pension scheme

2.6.19 G ~~Two~~ Three types of *investment* are specified here:

- (1) rights under a *stakeholder pension scheme*; ~~and~~
- (2) rights under a *personal pension scheme*; and
- (3) rights or interests under a pension scheme which provides *safeguarded benefits*.

...

2.6.19B G Under section 48(8) of the Pension Schemes Act 2015 *safeguarded benefits*
A means benefits other than:

- (1) money purchase benefits (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); and
- (2) cash balance benefits (defined in section 75 of the Pension Schemes Act 2015).

2.6.19C G (1) Rights under *stakeholder pension schemes* and *personal pension schemes* are *specified investments* for the purposes of the entire Regulated Activities Order.

- (2) Rights or interests under a pension scheme which provides *safeguarded benefits* as defined by section 48(8) of the Pension Schemes Act 2015 are only *specified investments* for the purposes of article 53E (Advising on conversion or transfer of pension benefits) and not in relation to any other *regulated activity*.

- (3) There are no exclusions in the Order.

...

2.7 Activities: a broad outline

...

2.7.15 G The *regulated activity* of *advising on investments* under article 53 of the *Regulated Activities Order* applies to advice on *securities* or *relevant investments*. It does not, for example, include giving advice about *deposits*, or about things that are not *specified investments* for the purposes of the *Regulated Activities Order* (~~such as interests under the trusts of an occupational pension scheme~~). ...

...

2.7.16F [text to follow]

Advising on conversion or transfer of pension benefits

2.7.16G G Under article 53E of the *Regulated Activities Order* giving advice to a person (“P”) who has *subsisting rights* in respect of any *safeguarded benefits* in their capacity as:

- (1) a member of a pension scheme; or
- (2) a survivor of a member of a pension scheme;

is a regulated activity if the advice is on the merits of P requiring the trustee or manager of the pension scheme to carry out any of the transactions listed in PERG 2.7.16G.

2.7.16H G The transactions in PERG 2.7.16FG are:

- (1) converting any of the *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or
- (2) making a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits* for P under another pension scheme; or
- (3) paying a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

2.7.16I G *Advising on conversion or transfer of pension benefits* can only be carried on in respect of one type of specified investments (see PERG 2.6.19CG(2)).

...

2.8 Exclusions applicable to particular regulated activities

...

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of: ...

...

(4) *advising on a home purchase plan; and*

(5) *advising on a regulated sale and rent back agreement; and*

(6) [text to follow]

(7) *advising on conversion or transfer of pension benefits.*

...

2 Annex 2G Regulated activities and the permission regime

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which ...
...	
(j) ...	
<u>(ja) advising on conversion or transfer of pension benefits (article 53E) is contained in the permission of advising on pension transfers and pension opt-outs [see note 4 to Table 1]</u>	...
...	

3 Table

Notes to Table 1
...
Note 4: For the purposes of the <i>permission</i> regime, the activity in (j)(ii) of <i>advising on pension</i>

transfers and pension opt-outs includes the following two regulated activities:

(1) advising on investments where it is carried on in respect of the following specified investments:

unit (article 81);

stakeholder pension scheme (article 82(1));

personal pension scheme (article 82(2));

life policy (explained in note 5); and

rights to or interests in investments in so far as they relate to a *unit*, a *stakeholder pension scheme*, a *personal pension scheme* or a *life policy*;

(2) advising on conversion or transfer of pension benefits where it is carried on in respect of rights or interests under a pension scheme which provides *safeguarded benefits*.

...

...

7.3 Does the activity require authorisation?

...

7.3.1E G Under article 53E of the *Regulated Activities Order* (Advising on conversion or transfer of pension benefits), advising a *person* (“P”) is a specified kind of activity if the advice:

(1) is given to P in their capacity as:

(a) a member of a pension scheme; or

(b) a survivor of a member of a pension scheme;

where P has *subsisting rights* in respect of any *safeguarded benefits*;
and

(2) is on the merits of P requiring the trustee or manager of the pension scheme to:

(a) convert any of the *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or

(b) make a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits* for P under another pension scheme; or

(c) pay a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

- 7.3.2 G Articles 53, 53A, 53B, 53C, ~~and 53D~~ and 53E of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages), *PERG* 12.6 (Advising on conversion or transfer of pension benefits), *PERG* 14.3, *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities).

...

7.4 Does the article 54 exclusion apply?

...

- 7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:
- (1) to advise on *securities* or *relevant investments* or *home finance transactions* or amounts to carry on advising on conversion or transfer of pension benefits; or
 - (2) to lead or enable *persons*:
...
 - (e) to enter as *SRB agreement seller* or *SRB agreement provider* into *regulated sale and rent back agreements* or to vary the terms of *regulated sale and rent back agreements* entered into by them as *SRB agreement seller* or *SRB agreement provider* where the agreement was originally established on or after 1 July 2009; or
 - (f) [text to follow]
 - (g) to do any of the following in the context of advising on conversion or transfer of pension benefits:
 - (i) convert *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or
 - (ii) make a transfer payment in respect of any of the benefits with a view to acquiring a right or entitlement to *flexible benefits* under another pension scheme; or
 - (iii) pay a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the benefits.

...

10.1 Background

- Q1. What is the purpose of these questions and answers ("Q&As") and who should be reading them?

...

The Q&As are primarily concerned with identifying the regulated activities (such as dealing or arranging deals in investments, managing investments or advising on investments) that may be carried on by persons (including trustees) who are involved with *occupational pension schemes*, ~~and~~ *personal pension schemes* or any pension scheme that provides *safeguarded benefits*. They are also concerned, but only in relation to *personal pension schemes* and *stakeholder pension schemes*, with identifying when the regulated activity of operating such a scheme will be carried on (see Q26).

...

10.2 General issues

...

- Q3. How will I know if my proposed activities are regulated?

...

- *advising on investments* (broadly, advising an investor on the merits of his *buying* or *selling* certain particular investments);
- *advising on conversion or transfer of pension benefits* (broadly advising a *member of a pension scheme* on converting, transferring or paying out *safeguarded benefits* in a pension scheme);

...

- Q4. What kind of investments do these regulated activities relate to?

...

The activity of *advising on conversion or transfer of pension benefits* relates exclusively to rights or interests under a pension scheme which provides *safeguarded benefits*.

...

10.4 Pension scheme service providers other than trustees

Q31. I provide administration services to pension schemes. Will I require authorisation or exemption?

Yes, if your services include any of the following activities and you cannot make use of an exclusion.

...

(8) Advising a member of a pension scheme or their survivor on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out safeguarded benefits could amount to advising on conversion or transfer of pension benefits (see PERG 2.7.16FG).

...

Q39. I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article 53 of the Regulated Activities Order if the advice concerns a *personal pension scheme* but probably not if it concerns an OPS that is not a *stakeholder pension scheme*. ~~The~~ In respect of the activity of advising on investments, the same factors apply to advice given to a member as apply to advice given to trustees (see Q38). But a particular factor will be whether the member is himself buying or selling a security or relevant investment (a "regulated investment").

...

In addition to advice that may fall under article 53 of the Regulated Activities Order, giving advice to members of a pension scheme could amount to advising on conversion or transfer of pension benefits where the advice relates to rights or interests under a pension scheme which provides safeguarded benefits (see PERG 2.7.16FG). This is the case regardless of how the rights or interests are held (see PERG 12.6).

...

10.5 Employers and affinity groups (such as trade unions)

...

Q43. When am I, as an employer, likely to be carrying on a regulated activity?

You are unlikely to be carrying on a *regulated activity* in the case of an OPS (other than one that is also a *stakeholder pension scheme*) unless you provide services that involve *regulated activity* to the trustees (such as giving them advice or arranging trust transactions). Any service that you might provide to your employees concerning their rights under the OPS will not be a regulated activity unless you are advising on conversion or transfer of pension benefits. But if you provide your staff with the opportunity to participate in a *personal pension scheme* or a *stakeholder pension scheme*, you are likely to be *arranging*. You may also be *advising on investments* if you provide your employees with advice on the merits of their joining the scheme (see Q39).

In respect of any pension scheme that provides *safeguarded benefits*, you may be *advising on conversion or transfer of pension benefits* where as part of your services to employees you provide advice on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out *safeguarded benefits* (see PERG 12.6).

...

10 Annex 4G Table summarising regulatory position of employers and affinity groups.

Activity carried on by employer or affinity group	Potential implications in terms of regulated activities and the need for authorisation
...	
Advising employees on the merits of participating in an occupational pension scheme or a group personal pension scheme or a stakeholder pension scheme, including advising employees against joining a personal pension scheme or advising them to transfer from a personal pension scheme.	...
<u>Advising employees in their capacity of members of a pension scheme or advising their survivor on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out safeguarded benefits.</u>	<u>This is likely to amount to <i>advising on conversion or transfer of pension benefits</i> but only where it is carried on by way of business, the guidance in Q6, Q44 and Q45 is applicable.</u>
...	

...

12.1 Background

- Q1. What is the purpose of these questions and answers ('Q&As') and who should be reading them?

These Q&As are aimed at, and should be read by, *persons* involved in the running of a *personal pension scheme* and those who give advice about or provide services to such schemes. They are intended to help such persons understand whether they will be carrying on a *regulated activity* and need *authorisation* or exemption under section 19 of the Financial Services and Markets Act 2000 following the changes to pension legislation that took effect on 6 April 2007 and on 6 April 2015. The Q&As complement the general *guidance* on regulated activities which is in Chapter 2 of our Perimeter Guidance manual ('PERG') and the general guidance about pensions-related activities which is in Chapter 10 of PERG.

The Q&As are set out under ~~four~~ five sections:

- ...
- the application of EU Directives (*PERG* 12.4); ~~and~~
- *financial promotion* issues (*PERG* 12.5); and
- *advising on conversion or transfer of pension benefits* (*PERG* 12.6).

...

12.3 Rights under a personal pension scheme

- Q15. I am a financial intermediary dealing with pensions. Am I affected by the fact that rights under a personal pension scheme are a specified investment?

...

In addition, rights or interests under a pension scheme which provides *safeguarded benefits* is a specified investment in respect of *advising on conversion or transfer of pension benefits* (see *PERG* 12.6).

...

- Q19. For advice to be regulated, it needs to relate to the merits of buying or selling a particular investment. When do rights under a personal

pension scheme become 'particular' rights and so particular investments?

...

In addition, it should be noted that advising a client P in their capacity as member of a pension scheme who has *subsisting rights* in respect of any *safeguarded benefits* on the merits of P requiring the trustee or manager of the pension scheme to:

- (a) convert any of the *safeguarded benefits* into different benefits that are flexible benefits under the scheme; or
- (b) make a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or
- (c) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the *safeguarded benefits*;

is a regulated activity on its own and would require the person carrying it out to be *authorised for advising on conversion or transfer of pension benefits* (see PERG 12.6).

...

- Q21. What exclusions may be available for advising on investments in connection with acquiring or disposing of rights under a personal pension scheme?

The usual exclusions for *advising on investments* and *advising on conversion or transfer of pension benefits* will potentially be available. In particular, article 67 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*):

...

After PERG 12.5 (Financial promotion issues) insert the following new section. The text is not underlined.

12.6 Advising on conversion or transfer of pension benefits

- Q29. What is the background to this *regulated activity*?

The effect of the Pension Schemes Act 2015 is that trustees or managers must ensure that a *member of a pension scheme* or a *survivor* has taken appropriate independent advice before converting

or transferring pension benefits, where the conversion or transfer is of *safeguarded benefits* to *flexible benefits*.

The *Regulated Activities Order* was amended so that the appropriate independent advice to be sought by a *member of a pension scheme* or a *survivor* is regulated.

- Q30. Does this mean that there is an overlap between “advising on conversion or transfer of pension benefits” and “advising on investments”?

Yes, there is an overlap between both activities. Under the *Regulated Activities Order* rights under a *stakeholder pension scheme* and under a *personal pension scheme* fall within the definition of *security*. This means that advising on any of these investments would fall under *advising on investments*.

Where a pension scheme provides *safeguarded benefits* then a person who is *advising on investments* may also be *advising on conversion or transfer of pension benefits* at the same time.

In practice, we expect that a person *advising on conversion or transfer of pension benefits* will also carry on *advising on investments*.

- Q31. What is the difference between both advising activities?

The regulated activity of *advising on conversion or transfer of pension benefits* applies to any *pension scheme* that has *safeguarded benefits*. This means it includes advising on transfers between *occupational pension schemes* where the transfer payment is in respect of *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits*.

In the context of pension schemes, *advising on investments* in respect of rights under a *personal pension scheme* or a *stakeholder pension scheme* is limited to these types of schemes and would not include occupational pension schemes.

- Q32. Does a person who advises on the conversion or transfer of flexible benefits need to seek authorisation?

When the conversion or transfer of *flexible benefits* involves advising on the merits of *buying, selling*, subscribing for rights in a *personal pension scheme* or in a *stakeholder pension scheme* or exercising any of these rights, either as the ceding scheme or the receiving scheme or both, then that would amount to *advising on investments* and authorisation is required. This is because the *regulated activity* of *advising on investments* applies in relation to rights under a *personal pension scheme* or rights under a *stakeholder pension scheme*.

When the conversion or transfer of *flexible benefits* involves

occupational pension schemes only and is not in respect of *safeguarded benefits*, then no regulated activity is being carried on.

For example, advice on the switching of *flexible benefits* between *defined contribution occupational pension schemes*. Similarly, advice on an *uncrystallised funds pension lump sum* payment out of a *defined contribution occupational pension scheme* is not regulated.

- Q33. Does a *guaranteed annuity rate* (GAR) mean that a pension policy has a *safeguarded benefit*?

In our opinion, a pension policy with a GAR has a *safeguarded benefit* and a person advising on it may be *advising on conversion or transfer of pension benefits*.

- Q34. Can advising on conversion or transfer of pension benefits be carried on in respect of any other *specified investments*?

No, the only *specified investment* relevant for *advising on conversion or transfer of pension benefits* is rights or interests under a pension scheme which provides *safeguarded benefits*.

It should be noted that rights or interests under a pension scheme which provides *safeguarded benefits* is a *specified investment* exclusively in respect of *advising on conversion or transfer of pension benefits* and not any other *regulated activity*.

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