

Guidance consultation 15/5

Ring-fencing: Guidance on the FCA's approach to the implementation of ring-fencing and ring-fencing transfer schemes

September 2015

1. Background to ring-fencing and ring-fencing transfer schemes

Introduction

- 1.1 This consultation sets out our proposed general guidance on our approach to the implementation of ring-fencing in the UK.
- 1.2 This consultation is relevant to firms and their groups which are required to establish a ring-fence to isolate their retail banking activities from their investment banking activities.

Ring-fencing legislation

- 1.3 The Banking Reform Act 2013 inserted provisions into the Financial Services and Markets Act 2000 (FSMA) that establish a ring-fencing regime for the UK's largest banks from 1 January 2019.
- 1.4 In broad terms, the legislation aims to isolate retail banking activities from investment banking activities. The core objective is to reduce the likelihood of disruption of key retail services by insulating ring-fenced bodies (RFBs) from risks arising elsewhere in their own groups or in the wider financial system.
- 1.5 Only banks with average total core deposits of more than £25 billion for a three-year period fall within the scope of ring-fencing. The ring-fencing regime will not apply to banks below the £25 billion threshold, building societies, foreign banks and independent private banks.
- 1.6 The regulated activity of accepting deposits is in most cases¹ identified as a 'core' activity which banking groups must place into RFBs. 'Excluded activities', which RFBs may not undertake, consist of dealing in investments as principal and commodities trading. The legislation also imposes specific prohibitions on RFBs, for example on exposures to financial institutions and branches and subsidiaries outside the EEA.
- 1.7 The responsibility for supervising compliance with the ring-fencing regime will fall largely to the Prudential Regulation Authority (PRA). The PRA is also required to make rules covering a wide range of areas, including the governance of, and prudential requirements on, ring-fenced banks.
- 1.8 The FCA is required by law to make rules specifying the information that a non-ring-fenced body (NRFB) must provide to certain individuals. In July 2015 we published CP15/23², where we have proposed rules in this area. CP15/23 also provides further background to ring-fencing and the FCA's role.

¹ The ring-fencing legislation provides that all deposits held with deposit-takers are deemed to be core deposits unless one or more of the account holders is: an individual with assets (money and transferable securities) of at least £250,000; a medium- or large-sized company; an entity in the same group as a medium- or large-sized company; or, a financial institution. A medium- or large-sized company for this purpose is a company that has one or more of the following criteria: a turnover of not less than £6.5 million; a balance sheet total of not less than £3.26 million; and/or, not fewer than 50 employees.

² www.fca.org.uk/news/cp15-23-ring-fencing

Ring-fencing transfer schemes

- 1.9 The Banking Reform Act 2013 introduced an additional form of a transfer scheme, ring-fencing transfer schemes (RFTSs). RFTSs will enable firms to use the legal procedures under Part VII of FSMA to give effect to any transfers of business needed by banking groups to achieve ring-fencing purposes (as defined in legislation). RFTSs have an important role in banks' plans to implement ring-fencing by 1 January 2019.
- 1.10 Some RFTSs may involve transfers of 'core' activities (e.g. core deposits) into a newly authorised RFB. Others may include transfers of non-core activities to a NRB or be transfers of unregulated business (e.g. IT activities) to comply with governance and internal organisation requirements prescribed by the PRA to preserve the integrity of the ring-fence.
- 1.11 The requirements in Part VII FSMA that apply to RFTSs are similar in many respects to those that apply to insurance transfer schemes. Firms may apply to the High Court to sanction the transfer of deposit-taking and other business from one entity (including a non-regulated entity) to another. The application to the court may only be made with the consent of the PRA, which will need to consult the FCA at specific stages in the RFTS process.
- 1.12 Firms are required to appoint appropriately skilled persons who will produce a scheme report. The FCA will be consulted by the PRA on the proposed skilled persons and scope of the scheme report, which the PRA has to approve. The scheme report assists the court in assessing the RFTS and considering whether, in all the circumstances of the case, it is appropriate to sanction the scheme.
- 1.13 The primary function of the scheme report is to inform the court on what adverse effects the RFTS would have on third parties and, if the adverse effects are reasonably necessary to implement the ring-fencing of retail banking. The PRA must have regard to the scheme report in deciding whether to consent to an application to the court for the sanction of a RFTS.

The ring-fencing transfer schemes process

- 1.14 Following initial PRA and FCA meetings with the firm proposing the RFTS to understand the scope and nature of the scheme, the firm submits a draft application to the PRA and FCA.
- 1.15 Part VII FSMA requires a person with necessary skills (skilled person) to be appointed to produce a scheme report. It is expected the firm will propose a skilled person, along with reasons why they consider that individual to be suitable. The PRA will assess the nominee in consultation with the FCA before approving or rejecting them, or nominating a different skilled person. The PRA and FCA will need to be satisfied that the skilled person has the necessary skills to enable them to make a proper scheme report.
- 1.16 The approved skilled person will submit a proposed scope for the scheme report, taking into account the expectations of the PRA and FCA. The PRA evaluates and approves the form of the scheme report after consulting the FCA. The PRA will have regard to the scheme report in deciding whether to consent to the application to the court.
- 1.17 The court proceedings will then begin. Under FSMA, any person who alleges that they would be adversely affected by carrying out the scheme is entitled to be heard in the final court hearing. A person is not entitled to be heard in the proceedings unless, before the hearing, they have filed with the court a written statement of the representations that they wish the court to consider.

- 1.18 The current expectation is that firms will send out notices individually to consumers who are likely to be adversely affected. In other types of business transfer schemes, it is firms' practice to send out a communications pack³ to affected consumers. We expect to be consulted by the firms on these notices before publication.
- 1.19 Part VII FSMA provides for a right of the regulators to participate in the court proceedings, i.e. the PRA and, if the transferee is an authorised person, the FCA. This is an opportunity for the regulators to raise regulatory issues that the court may find useful and relevant. From an FCA perspective, such issues could include our view of unresolved consumer issues / objections or concerns over whether customers are treated fairly.
- 1.20 The court cannot sanction a RFTS unless the PRA has issued a certificate of financial resources. The certificate confirms that, taking the proposed transfer into account, the transferee possesses adequate financial resources (or will possess them before the scheme takes effect). If the transferee is an FCA solo-regulated entity, the certificate of financial resources is issued by the FCA.
- 1.21 One of the key steps in the RFTS process is consent by the PRA for the application to be made to the court for an order to sanction the RFTS. We will assess the relevant conduct areas of the scheme and work closely with the PRA with a view to advancing our objectives by securing satisfactory resolution of our areas of concern before the application is made.
- 1.22 The RFTS process ends with the final hearing and the decision on the date from which the RFTS takes effect.

³ Typically, in Insurance Business Transfers and Banking Business Transfers, this pack takes the form of a cover letter, FAQs or information leaflet. In most cases, it is not uncommon to include the required documents (statement of the terms of the scheme and summary of scheme report).

2 Overview and guidance summary

Introduction

- 2.1 This chapter summarises the areas covered by the guidance set out in Annex 1.
- 2.2 The guidance proposed in this document should be read in conjunction with the PRA's consultation paper CP 33/15 setting out the PRA's proposed approach to RFTSs.
- 2.3 While section 139A of FSMA does not require us to carry out a cost benefit analysis for this guidance, we have considered the cost implications of the proposed guidance. We believe the guidance is likely to result in minimal incremental costs to firms (incremental with respect to what the legislation already requires). This is because firms are expected and able to comply with the legislation that applies to RFTS in the absence of this guidance.
- 2.4 Under the Equality Act 2010, we must consider the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we assess the equality and diversity implications of any new policy proposals. In our view there are no specific equality and diversity implications from this guidance.

How to respond to this consultation

- 2.5 We are asking for your written responses to this consultation by close of business on 30 October 2015.
- 2.6 You can send your response by email to RFTSGuidanceConsultation@fca.org.uk or by post to:

Giovanni Addis
Retail Banking Supervision Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

- 2.7 We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

Supervision of ring-fencing implementation

- 2.8 We will assess the potential risks posed by the implementation of ring-fencing to the advancement of our statutory objectives and duties.

- 2.9 A key area of supervisory focus will be consumer outcomes during and after implementation of the regime. Another important focus for the FCA will be communications to customers.
- 2.10 In pursuing our statutory objectives in the course of implementation, we will continue to work closely with the PRA.

Regulatory transactions

- 2.11 The FCA recognises that the implementation of ring-fencing may involve firms submitting a considerable number of regulatory transactions. The FCA will process them in close coordination with the PRA.
- 2.12 All ring-fencing-related regulatory transactions will be processed following the usual single administrative process, led by the PRA, as per both authorities' business-as-usual procedures. Both regulators will continue to work closely together in coordinating the execution of firms' applications.

Ring-fencing transfer schemes

- 2.13 In considering RFTSs, the FCA will be concerned to assess the potential risks posed by the scheme to the advancement of our statutory objectives and duties.
- 2.14 We will consider the potential implications of the proposed transfer on our objectives as part of our normal supervision of the transferor or transferee, as well as when consulted by the PRA in relation to some of its statutory decisions on the RFTS.
- 2.15 One of the statutory decisions by the PRA requiring consultation with the FCA is the approval of the proposed skilled person who is appointed to make the scheme report. When consulted by the PRA on the suitability of the proposed skilled person, the FCA will have regard to a number of general criteria, including skills and relevant specialised knowledge. The suitability of a skilled person to make the scheme report will depend on the nature of the scheme, the firms concerned, and the overall circumstances of the transfer.
- 2.16 The other statutory decision by the PRA requiring consultation with the FCA is the approval of the form of the scheme report. When consulted by the PRA, the FCA will provide feedback on matters it expects the scheme report to contain. The scheme report identifies what the adverse effects could be for persons other than the transferor. From the perspective of FCA objectives, one of the key 'persons' who could be adversely affected by the RFTS are customers of the group, and consumers more generally. To assess whether outcomes might be negative for consumers, the FCA would expect the scheme report to contain information on a number of areas, including on consumers' position before the transfer and their position subsequently. The FCA also expects the scheme report to include the skilled person's opinion on other persons (i.e. other than the transferor or customers of the group or consumers more generally) who are likely to be adversely affected. The skilled person should have regard to any direct impact on competitors of the transferor or transferee, such as firms that are provided access to payment systems by the transferor or transferee. The amount of detail the FCA expects in a scheme report will depend on the complexity of the scheme, the materiality of the details themselves, and the circumstances.
- 2.17 A key concern for us will be the arrangements made to communicate the proposed scheme to consumers. There is presently no statutory requirement on publishing notices in relation to a RFTS. We are therefore setting out in Annex 1 our proposed guidance to firms with regard to giving notice publicly and to affected consumers, in particular because of the limited right to be heard in court.

- 2.18 The FCA is entitled to be heard by the court on any application to sanction a RFTS where the transferee is an authorised person. In practice, the FCA will have discussions with the transferor and/or transferee firms well before an application is made to the court. Any concerns we may have are expected to be dealt with by firms before the court hearing.

Annex 1:

General guidance on FCA's approach to the implementation of ring-fencing

THE IMPLEMENTATION OF RING-FENCING: GENERAL GUIDANCE

A. Application and interpretation

1. This is general *guidance* given under section 139A (1) of the Financial Services and Markets Act 2000.
2. This *guidance* primarily advances our consumer protection objective, as a key area of our supervisory focus will be consumer outcomes during and after implementation of the regime. Doing so will also advance our integrity objective in protecting the orderly operation of the financial markets and is compatible with our strategic objective by ensuring that the relevant markets function well. Where relevant, this guidance also takes into account and advances our competition objective.
3. This *guidance* applies to the following:
 - (1) a *firm* which, as a UK authorised person (as defined in section 106B(6) of the Act) and in relation to the *group* of which it is a member, is subject to the ring-fencing requirements in Part 9B of the Act and
 - (2) a *firm* in (1) and the *group* of which it is a member in relation to a ring-fencing transfer scheme (as defined in section 106B(1) of the Act)
4. Interpretive provisions (including definitions in the Glossary) of the *FCA Handbook* apply to this *guidance* in the same way they apply to the *FCA Handbook*, but where a definition is defined in the *Act*, that applies for the purpose of this guidance.

B. High-level approach to supervision of ring-fencing implementation

5. We will assess the potential risks that the implementation of ring-fencing poses to us advancing our statutory objectives and duties.
6. The *FCA* expects that *firms'* implementation plans are drawn up and implemented with due regard to the interests of *consumers* (see Principle 6 on customers' interests in *PRIN 2.1.1R (6)*). For example, the *FCA* will focus on the need to avoid material disruptions of service to *customers* when creating new corporate entities, migrating *customers* between entities, or changing terms, account numbers and sort codes.
7. Another important focus for the *FCA* will be communications with *customers* (see Principle 7 on communications with clients in *PRIN 2.1.1R (7)*). A *firm* should have thorough and comprehensive plans for communications, and engagement, with *customers* who are affected by its ring-fencing implementation plans to explain the changes it is making.
8. In pursuing our statutory objectives, we will continue to work closely with the *PRA*. The *FCA* and *PRA* will aim to be appropriately coordinated, avoiding duplication of effort between the two regulators and duplication of demands (for example, for information) upon *firms*.

C. Regulatory transactions

9. We recognise that implementing ring-fencing will involve *firms* submitting a considerable number of regulatory transactions (e.g. Authorisations applications).
10. All regulatory transactions related to ring-fencing will be processed following the usual single administrative process, led by the *PRA*, in line with its and the *FCA*'s respective business-as-usual procedures. The regulators will continue to work closely together to process *firms'* applications.

Authorising a new dual-regulated entity

11. Pre-application meetings are a key part of the administrative process for these types of transactions. We aim to use these meetings to establish a relationship with key individuals within the applicant *firm*, gain greater understanding of the applicant's proposals, and raise any issues or concerns as soon as possible. The pre-application process will also make it clearer what we expect to receive from applicants.
12. Both regulators are obliged under section 55V of the Act to determine a new authorisation application for a new dual-regulated entity within a statutory timeframe of 12 months; or six months when the application is deemed complete (whichever is shorter).
13. As such, each regulator will assess an application against their respective Threshold Conditions which are set out in Schedule 6 of the Act. Further information can be obtained from the *FCA Handbook*⁴, which sets out the *FCA*'s *threshold conditions* for *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA*-regulated activity.
14. There are different options for authorising a new banking entity. The *FCA* and *PRA* will discuss the options with applicants during the authorisation process. We determine authorisations within six months of receiving a complete application. The *PRA* and *FCA* offer an alternative process that contains clear stages, so there is a distinction between meeting the key regulatory requirements and the wider operational needs of setting up a dual-regulated entity. This option, called Mobilisation, offers the same pre-application support, but firms can submit a shorter application that focuses on key essential elements with the remaining information following later. For further details please see the *FCA* website.⁵

Authorising a new solo-regulated entity

15. We will process the authorisation of a new solo-regulated entity in line with our business as usual procedures. The *FCA Handbook* sets out *threshold conditions* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA*-regulated activity.⁶
16. Some *FCA* solo-regulated entities can become *PRA*-designated firms. For further details please see the *PRA*'s website⁷.

Other applications (waivers, permissions under the prudential regime, change in control and variation of Part 4A permissions)

17. In implementing ring-fencing, we will also process applications for waivers, permissions (including any variation of existing permissions) under the Capital Requirements Regulation (EU) No, 575/2013), change in control and variation of *Part 4A permissions* in line with its business as usual procedures.

⁴ <https://fshandbook.info/FS/html/FCA/COND/2>

⁵ www.fca.org.uk/firms/about-authorisation/dual-regulated-firms/banking-applications

⁶ www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.asp

and <https://fshandbook.info/FS/html/FCA/COND/2>

⁷ www.bankofengland.co.uk/pru/Pages/authorisations/designatedfirmslist.aspx

D. Ring-fencing transfer schemes: overall FCA approach

18. Transfers of business within a *group* may have both positive and negative effects on individual *consumers*. We will be concerned to assess the potential risks a ring-fencing transfer scheme poses to us advancing our statutory objectives and duties.
19. In broad terms, the *FCA*:
 - (1) will be consulted by the *PRA* in relation to some of the statutory decisions it takes on a ring-fencing transfer scheme (see paragraphs 22 and 30) and expects to be consulted in relation to the transfer under section 3D of the *Act* (Duty of FCA and PRA to ensure coordinated exercise of functions)
 - (2) must, as part of its normal supervision of one or both of the transferor or transferee, consider the potential implications of the proposed transfer on its objectives and
 - (3) must consider the arrangements made to communicate the proposed scheme to *consumers* in line with Principle 7 (Communications with clients) (see *PRIN* 2.1.1R)
20. A key concern for the *FCA* will be to satisfy itself that the *firms'* notification plan, which relates to the communications to affected *consumers*, has adequate information and allows reasonable time within which *consumers* are able to determine:
 - (1) whether or not they are likely to be adversely affected to an extent greater than is reasonably necessary in order to achieve the purpose of the ring-fencing
 - (2) if so, whether to make representations to the court and
 - (3) how, and by when, to:
 - (a) file (or lodge) with the court a written statement of the representations that the consumer wishes the court to consider and
 - (b) serve copies of the statement on the *PRA* and the transferor concerned
21. A *firm* should consider whether any aspect of its proposals should be discussed with the *FCA* (as well as the *PRA*) at an early stage.

E. Skilled persons: suitability

22. Under section 109A of the *Act*, the *PRA* must consult the *FCA* before nominating or approving a person with the necessary skills to make the scheme report.
23. As the purpose of the scheme report is to inform the court, the rules applying to experts and their evidence in civil court proceedings are relevant to *FCA*'s (and the *PRA*'s) consideration of the skilled person. In broad terms:
 - expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation
 - an expert must assist the court by providing objective, unbiased opinion on matters within his expertise

- the expert should maintain professional objectivity and impartiality at all times
24. The *PRA*'s Statement of Policy on ring-fencing transfer schemes sets out its expectations on the criteria of independence on skilled persons. Consistently with, and when consulted by, the *PRA*, the *FCA* will take account of the criteria under the rules of court as expressed in the *PRA*'s Statement of Policy. It will also assess the suitability of the skilled person subjectively, considering previous interests or connections in all the circumstances of the parties and the transfer scheme.
25. In broad terms, a skilled person would normally be expected to have relevant business, technical and technological skills and expertise, for example an accountant, lawyer or compliance consultant.
26. On being consulted by the *PRA*, the *FCA* will have regard to the following general criteria in assessing the suitability of the proposed skilled person:
- (1) the skills and relevant specialised knowledge, both practical and theoretical, and experience necessary to assess the transfer and complete the scheme report, for example knowledge and experience of the *firm* proposing the transfer and the types and complexity of the business transferred
 - (2) the ability to complete the scheme report within the time expected by the regulators and
 - (3) the detachment the skilled person appears to have, bearing in mind any existing professional or commercial relationship, to be able to collect or update information for the purpose of writing the conduct sections of the scheme report or to give an objective opinion on conduct matters included in the scheme report
27. A *firm* should cooperate fully with the skilled person and provide them with access to all relevant information and appropriate staff.
28. The suitability of a skilled person to make the scheme report will depend on the nature of the scheme (including the type and complexity of business being transferred), the *firms* concerned and the overall circumstances of the transfer. The *FCA* will use the preliminary information supplied by *firms* proposing the scheme (and any other knowledge it has of the circumstances and the *firms*) to consider what specific skills are needed to make a proper report on the scheme and what specific criteria should therefore be applied to the choice of skilled person, in addition to the general criteria set out above. We expect to inform the *firms* proposing the scheme of any such specific criteria we are minded to apply.

F. Form of scheme report

29. Section 109A(4) of the *Act* requires the scheme report to state:
- (1) whether persons other than the transferor concerned are likely to have been adversely affected by the scheme; and
 - (2) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) of the *Act* is relevant.
30. The *PRA* must therefore be satisfied that the skilled person has addressed these questions sufficiently for it to reach a view whether to consent or not to the application and, in consultation with the *FCA*, whether to approve the form of the scheme report.
31. To address these matters, the scheme report should, firstly, identify what the adverse effects could be for persons other than the transferor.

32. Adverse effects could cover a range of negative outcomes. To assess whether outcomes might be negative, the skilled person would need to have regard to the position of the person in question before the transfer and their position subsequently.
33. From the perspective of the *FCA's* objectives, one of the key 'persons' who could be expected to be adversely affected are the *customers* of the group, and, more generally, *consumers* (as defined in section 1G of the *Act* to include persons who may use services provided by unregulated group service companies in the course of *regulated activities* provided by the transferor or transferee, persons who have invested or may invest in financial instruments and persons who deal with the transferor or transferee in the course of their provision of *regulated activities*). Such persons could include *customers* or entities with connections to the whole banking *group* and not just to the transferor or transferee.
34. Under s. 109A(5) of the *Act* which obliges the *PRA* to consult the *FCA* before approving the form of the scheme report, the *FCA* will provide feedback on matters it expects the scheme report to contain. In this regard:
- (1) The scope of matters to be covered, and amount of detail, the *FCA* expects in a scheme report will depend on the nature and complexity of the scheme (including the type and complexity of business being transferred), the materiality of the details themselves, the *firms* concerned and the overall circumstances of each RFTS.
 - (2) While this *guidance* focusses mainly on likely adverse effects on *consumers*, the scheme report should also include the skilled person's opinion on other persons (i.e. other than the transferor or *customers* of the group or *consumers* more generally) who are likely to be adversely affected by the RFTS by applying similar principles of this *guidance* as appropriate. The skilled person should have regard to any direct impact on competitors of the transferor or transferee, such as *firms* that are provided access to payment systems by the transferor or transferee.
35. With regard to paragraph 34, the matters the *FCA* would normally expect the scheme report to contain include the following:
- (1) the skilled person's opinion of likely adverse effects of the scheme on *customers* of the group, and, more generally, *consumers*, distinguishing between different effects on different groups of *consumers*
 - (2) the skilled person's opinion of whether persons likely to be adversely affected are properly identified for purposes of the planned communications to *customers*
 - (3) matters (if any) that the skilled person has not taken into account or evaluated in the report that might, in his opinion, be relevant to *consumers'* assessment of whether they, or a group of them, are likely to be adversely affected by the scheme and
 - (4) for each opinion that the skilled person expresses in the report, an outline of his reasons
36. On the likely effects of the scheme on *consumers* in paragraph 35(1), the scheme report should include:
- (1) a comparison of the likely effects if the scheme is or is not implemented, with an opinion on whether any adverse effects of the scheme being implemented on *consumers* affected are not likely to be greater than is reasonably necessary in order to achieve the ring-fencing purposes

- (2) a view on whether the skilled person considered alternative arrangements and, if so, what and whether any such alternative arrangements would lead to adverse effects on *consumers* that are less than the scheme proposed and
 - (3) where different groups of *consumers* are likely to be affected differently by the scheme, a comment on those differences where material to *consumers*
37. In providing an opinion on the likely effects of the scheme on *consumers* in paragraph 35(1), the skilled person would normally be expected to have regard to factors that include the following, where applicable:
- (1) *customers'* outcomes (taking account of, for example, ability to transfer deposits, investments or products; penalties or other impediments, if any, to such transfer; or if there are exercisable rights to set-off loans against deposits, how a negative impact to *customers* is addressed and any change to contractual rights)
 - (2) the continuity, and levels, of service, including payment services, provided to *customers*
 - (3) the continuity of, or changes to, levels of protection under the Financial Services Compensation Scheme
 - (4) whether rights in relation to complaints, legal or other proceedings against the transferor (in relation to those already commenced or threatened, or proceedings in the future, including those not yet anticipated) are preserved or otherwise
 - (5) whether rights to financial redress for legacy liabilities of the transferor for miss-selling of financial products are affected
 - (6) whether product terms and conditions, including product benefits and outcomes for customers, will be affected by the transfer
 - (7) whether product administration, including fees and other costs, may be affected on transfer
 - (8) the amount of client money transferred and the terms of the transfer
 - (9) in relation to *customers* being transferred to another entity, any material adverse change to the level of consumer protection afforded by the availability of adequate resources of the transferee and
 - (10) the likely effects of the scheme on IT systems, operating model and matters such as governance, management, business strategy, and financial positions, in so far as they may affect *customers* adversely
38. In terms of our consideration of the planned communications to *consumers*, where the scheme report concludes that there are *consumers* who are likely to be adversely affected, the scheme report should include the skilled person's views on the extent to which the statement setting out the terms of the scheme and the summary of the scheme report (see section G) are clear, fair and not misleading to each group of *consumers* who are likely to be adversely affected, taking into account:
- (1) whether *customers*, or a group of *consumers*, are differently affected and
 - (2) whether *consumers* have received adequate information to consider the effects of the transfer as affecting each *consumer* or group of *consumers*

G. Court proceedings: notifications

39. Under s.110 of the *Act*, any person who alleges that he would be adversely affected by the carrying out of the scheme is entitled to be heard in the final hearing of the court that is conducting the sanction proceedings. However, this right is limited - a person is not entitled to be heard in the proceedings unless before the hearing:
- (1) they have filed with the court a written statement of the representations that they wish the court to consider and
 - (2) served copies on the *PRA* and transferor concerned
40. The transferor concerned or transferee, or both, should give notice to those persons likely to be adversely affected by the scheme. In particular, the transferor or transferee should consider giving notice of the application in one or more of the following ways:
- (1) publication in:
 - (a) the London, Edinburgh and Belfast Gazettes and
 - (b) national newspapers in the *United Kingdom* (normally two newspapers, but wider publication may be appropriate in some circumstances) and
 - (2) individually sent to all *consumers* who are likely to be affected by the scheme
41. It would normally be appropriate for the following documents to be made available, free of charge, to anyone requesting them:
- (1) a statement setting out the terms of the scheme and containing a summary of the scheme report and
 - (2) a copy of the scheme report.
- The internet can be used for this purpose if it is suitable for the person making the request.
42. Recipients should understand in broad terms from the summary of the scheme report how the scheme is likely to affect them. The summary should be clear and concise while containing sufficient detail for the purpose.
43. The *FCA* should be given the opportunity to comment on the notices in paragraph 40, the statement and the summary of the scheme report before they are published or sent, unless the *firms* proposing the scheme have been informed in writing that this is not necessary.
44. The *FCA* would normally expect a period of more than six weeks between sending notices to persons likely to be adversely affected and the date of the court hearing. Therefore it would be sensible, before the directions hearing by the court to consider the planned notifications to consult the *FCA* on its views about what planned communication might be appropriate. The *FCA* will take into account the practicality and costs of sending notices to those persons, the likely benefits or receiving notices and the efficacy of other arrangements proposed for such communications (including additional advertising or, where appropriate, electronic communication).

H. Court proceedings: certificate of financial resources for FCA solo-regulated transferee

45. Where the transferee is a solo-regulated *firm*, the certificate of financial resources required under section 111(2) (ab) and paragraph 9C of Schedule 12 of the *Act* is issued by the *FCA*.

46. The certificate of financial resources certifies that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
47. In order to issue a certificate of financial resources, the *FCA* will take into consideration a number of factors, including the *firm's* regulatory capital position, management accounts, projections and scheme documents. The *FCA* expects to co-operate closely with the *firm's* accountants and internal finance staff.
48. If financial resources are not considered adequate, additional regulatory capital may need to be raised by the transferee before the ring-fencing transfer scheme is sanctioned by the court.

I. Court proceedings: FCA participation

49. The *FCA* is entitled to be heard by the court on any application to sanction a ring-fencing transfer scheme where the transferee is an *authorised person*.
50. In practice, the *FCA* will expect to have discussions with the transferor or transferee firms, or both, well before an application is made to the court. The *FCA's* assessment of the ring-fencing transfer scheme is a continuing process and the *FCA* expects any concerns it may have are dealt with by firms before the court hearing.
51. In assessing the potential risks posed by a transfer scheme to its statutory objectives, the *FCA's* consideration includes whether:
 - (1) the terms of the scheme are unfair to a group of *consumers*
 - (2) adequate steps have been taken to tell *consumers* likely to be affected about the transfer and whether they had adequate information and time to consider it
 - (3) there is any affected *consumer* or group of affected *consumers* who did not, or will not, receive any communications on the transfer scheme and why
 - (4) there is adequate information or support to help *consumers* in resolving concerns and potential objections
 - (5) there is adequate information or support to help *consumers* on how, and by when, to file (or lodge) with the court (including service on the *PRA* and transferor concerned) a written statement of the representations that they wish the court to consider
 - (6) there are *consumer* concerns or alleged representations which remain unresolved or have not been adequately resolved and
 - (7) taking the proposed transfer into account, the transferee possesses, or will possess before scheme takes effect, adequate financial resources
52. While considerable reliance will be placed on the scheme report, the *FCA* will form its own view taking into account other relevant information and having regard to its statutory objectives.
53. The *FCA* may exercise its other powers under the *Act* if it considers this a more effective method of advancing its statutory objectives.
54. In order to enable the *FCA* to assess the scheme and to facilitate the process, the parties to the proposed transfer should ensure timely provision of all relevant information to the *FCA* for its consideration. These include:

- (1) the scheme documents
- (2) the scheme report
- (3) representations or objections raised by *consumers*
- (4) written statements of representations filed (or lodged) with the court by *consumers*
- (5) any witness statements or other evidence which the parties to the scheme intend to submit to the court and
- (6) the draft order.