ADVISER GUIDE

DB pension transfer advice

Summary of FCA policy statement PS20/6

Introduction

On 5 June 2020, the FCA issued its latest publications about defined benefit (DB) transfer advice, including a host of new rules for advisers operating in this market.

This is the latest in a long line of communications on this subject and included feedback on the FCA's consultation last year.

As well as the new rules, the FCA also published a consultation on changes to its non-handbook guidance on DB transfer advice; a statement about its current findings in this market; and two new guides aimed at consumers. One of these documents gives consumers more information about DB transfers, and the other includes a checklist for consumers if they believe they have been given incorrect advice on a DB transfer.

FCA documents published 5 June 2020

- Policy statement PS20/6
- Guidance consultation GC20/01
- Defined benefit transfers – a further update on our work
- Information for consumers – defined benefit transfers
- Advice checker: defined benefit pension transfers

IMPORTANT

This information is based on current understanding of pension tax rules. This is provided for information only; we do not provide advice.

Tax rules may change in the future and the tax treatment depends on personal circumstances. This guide and any case studies are provided for professional advisers' use only.

This adviser guide summarises the main points of the policy statement.

FCA policy statement PS20/6 and other changes	
Educational triage process	15 June 2020
Ban on contingent charging	1 October 2020
New abridged advice process	1 October 2020
Advice charges communication	1 October 2020
One-page suitability report summary	1 October 2020
New data requirements	1 October 2020 - 1 April 2020
PTS require 15 hours CPD each year	CPD period starting after 1 October 2020
PTS qualifications	1 October 2021

Ban on contingent charging

After much deliberation, the FCA has decided to ban contingent charging for DB transfers and conversions.

Contingent charging is when the adviser is only paid if the transfer goes ahead. The charge is deducted from the value of the transferred pension fund. Some argue it enables those who don't have readily accessible funds to pay for the cost of pension transfer advice. The FCA, however, felt contingent charging created too much of a conflict of interest, and was likely to result in bad advice.

Advisers can charge a different level of non-contingent charges if they are not undertaking the full range of advising and related services – for example, if they are not advising on the proposed destination for the funds, they could offer lower charges for the transfer advice to self-investors.

Advisers can also charge different amounts to different types of client where there is a genuine reason to do so – for example, new clients and existing clients.

'Gaming the system' prevention

The FCA is worried advisers will try to 'game the system'. So it has introduced rules to prevent this.

- Payments to third parties, such as introducers, should be the same amount whether or not the consumer transfers their pension.
- Implementation costs cannot be separated from pension transfer advice costs. This prevents an adviser from charging a small amount for transfer advice but a larger amount for implementation costs incurred only if the transfer goes ahead.
- Ongoing advice charges have to be the same regardless of whether the source of the pension fund is a transfer or not. Again, this prevents advisers from charging small amounts for pension transfer advice but 'back-loading' the costs onto the ongoing advice charge.

Implementation period

This has been a tough decision for the FCA. Its view is that contingent charging creates a conflict of interest, and the ban has the potential to reduce the number of customers receiving inappropriate advice.

However, it accepts banning contingent charging will reduce access to advice. The FCA has estimated a third of those who will be cut out from getting advice on their transfer could have been financially better off by transferring.

Overall, however, the FCA believes most consumers will not be materially harmed by remaining in their existing DB scheme if they choose not to take advice.

To counterbalance claims that those who most need the advice will be prevented from receiving it, the FCA has introduced a set of carve-outs from the contingent charging ban.

Carve-outs from the contingent charging ban

Some consumers will still be able to pay for advice on a contingent basis. These consumers have certain identifiable circumstances – they are in ill health or dire financial circumstances – and could potentially benefit from a DB transfer but do not have the means to pay for the advice.

However, the FCA emphasises that just because someone falls into one of these categories, that doesn't means their DB transfer is automatically suitable. Instead, it expects to see cases where the adviser's recommendation is to stay within the DB scheme.

Advisers cannot charge carve-out consumers a smaller fee if the transfer proceeds than they would charge other consumers.

The FCA expects the firm to have a clearly defined policy on how to apply the carve-out exemptions. The policy may also include that, if the firm believes the client would qualify for a carve-out exemption, then they should offer the client abridged advice to confirm eligibility.

The two categories of carve-out include those who don't have funds to pay for advice and are in either serious ill health or serious financial difficulty.

Serious ill health

The consumer must have a likely life expectancy of below age 75. People who have life-limiting medical conditions can self-evidence their medical situation.

Consumers should be able to access their own medical files with little time delay or additional cost. Financial advisers can also add to the evidence using information generally available from reputable organisations and charities.

Serious financial difficulty

People may qualify for this exemption if paying the pension transfer advice fee pushes them into financial difficulty. The rules do not prescribe a threshold or definition of serious financial difficulty. This gives advisers and their clients more flexibility.

However, the draft guidance suggests advisers should be able to evidence clients have been unable to maintain payments on a mortgage/rent, debt repayment, Council Tax or utility bills for at least three of the past six month. It's likely the client has documented debts, and they have cut out all non-essential spending.

The guidance suggests in most cases the client should be no younger than 54 and a half years old, as they would need to access the funds on transfer. However, they could be younger if they had a protected retirement age (and it was a buddy transfer) or if they were able to access the transferred funds early under the ill health or serious ill health rules.

Triage

Triage should give the consumer enough factual information to help them decide whether to proceed to full advice. The adviser cannot give any personalised advice or steer the consumer towards a specific choice.

The FCA recognises this would restrict some advisers' ability to engage with consumers with the aim of filtering out those who are not suitable candidates for a transfer. It is going to monitor this area.

Decision trees or RAG-rated questionnaires cannot be used as part of the triage process. The FCA believes that, as advisers can only make a binary recommendation – to either transfer or not transfer – then these tools carry too high a risk of crossing the advice boundary.

The draft guidance includes some examples of what a good triage process could look like, including referring clients to an unconnected third-party triage service.

These new rules come into effect immediately. The start date was 15 June 2020.

Abridged advice

This is a new short form advice process which is more affordable than full advice:

1. the adviser can give a personal recommendation that the client should not transfer; or
2. the adviser can tell the consumer it is unclear whether they would benefit from a pension transfer based on the information collected through the abridged advice process. The adviser must check if the consumer wants to continue to full advice, and if they understand the associated costs.

If the client decides to continue to full advice, the adviser must offset the cost of the abridged advice against the cost of the full advice, so the client doesn't pay twice for the same work.

The adviser can give abridged advice free of charge if this is not done as part of an attempt to game the ban on contingent charging.

Before the adviser can implement any transfer, the client must have gone through the full advice process.

If the adviser tells the client the situation is unclear, then this is **not** an indication that the transfer is recommended. The FCA expect some clients who proceed to full advice will be advised not to transfer.

If the personal recommendation is not to transfer, then the process usually stops. The client could go on to seek full advice, but the FCA believes this indicates the client will become an 'insistent client' and it would expect in most cases the outcome from full advice would be a recommendation to not transfer.

Abridged advice can be offered from 1 October 2020. Advisers do not have to offer abridged advice, but if they do, it has to be carried out or checked by a pension transfer specialist.

The draft guidance makes it clear firms should consider the benefits of the client's existing scheme. However, an APTA or TVC cannot be included in the abridged advice. Otherwise advisers would effectively be giving full advice without charging for it, which would undermine the ban on contingent charging.

To allow a transfer to go ahead, under the Pension Schemes Act 2015, the trustees of a DB scheme need to get confirmation that consumers who have safeguarded rights of £30,000 or more have received advice. This confirmation is only if client has been through the full advice process (and not abridged advice).

Implications

As an adviser cannot give personalised advice through the triage process, the FCA has positioned abridged advice as a service firms can offer clients to establish on a low-cost basis whether they may be a suitable candidate for transfer.

The adviser is giving a personal recommendation not to transfer, based on pared-down analysis. Advisers have to take full liability for that personal recommendation.

Workplace pensions comparison

In the policy statement, the FCA states that ongoing advice charges create a conflict of interest as an adviser may have a strong monetary incentive to recommend one course of advice over another. And that, over time, these charges take their toll on the size of the pension fund and therefore the amount of pension income the customer can take.

The FCA believes many consumers would not benefit from ongoing advice, as their circumstances are unlikely to change significantly from year to year.

More suitable than the workplace pension scheme

The adviser has to show the proposed receiving scheme is not only as **suitable** as the customer's workplace pension scheme but that it is **more suitable.**

This strengthened requirement is effective from 1 October 2020. It applies to all advisers – including those who use panels or are restricted, including vertically-integrated firms. The FCA states if these firms' business model cannot accommodate making an off-panel recommendation, then they should consider restricting their advice to only customers who don't have an available workplace pension scheme.

The FCA says advisers cannot simply add more paragraphs to suitability reports to dismiss the workplace pension scheme. Instead, advisers must change their processes to include a comparison with the workplace pension scheme in the APTA, and to recommend a transfer to the workplace pension scheme where it is suitable.

Implications

In most cases, people transfer around the time they are retiring and do not have a current workplace pension scheme. However, the rules state the adviser may choose to take any previous workplace pension scheme into consideration if appropriate.

Even if the client is only months away from retirement, if they have a current workplace pension scheme, this has to be considered and included within the APTA analysis, even if it may be apparent why the workplace pension scheme is not appropriate (for example, it does not offer flexi-access drawdown).

'Your personalised charges'

Before any advice is provided, firms have to provide the client 'in writing' with the monetary amounts the customer would pay for abridged and full advice and any subsequent ongoing charges in a document entitled 'Your personalised charges'. The amounts have to be personal to the customer to differentiate it from the generic adviser charging structure.

One-page suitability report

Firms must include a new initial one-page summary to the suitability report. This has to include the below.

1. PENSION TRANSFER SUMMARY
   The anticipated first-year charges in pounds and pence in the receiving scheme, including platform, product, investment, and ongoing advice charges. This is compared to the costs to the client in the DB scheme and the revalued monthly income they could receive from the DB scheme, as well as any workplace pension scheme charges. Finally, a statement must say how much the transfer advice costs, and how many months of income from the DB scheme would be needed to pay it.
2. PENSION TRANSFER RISK WARNING
   The risks associated with pension transfers must be laid out, and the client must sign to indicate they accept these.
3. MY ADVISER'S RECOMMENDATION
   A summary of the personal recommendation must be given, and the client must sign to indicate they intend to follow the transfer advice.
4. ONGOING MANAGEMENT ADVICE
   Information about ongoing services must be given, including the cost in pounds and pence. The client must be told they are not required to take these services and can cancel them at any time. The client must sign to indicate they accept the ongoing management advice.

The suitability report has to be provided in good time before a transaction is undertaken.

PTS qualifications and CPD

Pension transfer specialists (PTSs) have to undertake a minimum of 15 hours of CPD each year focusing specifically on pension transfer advice. Five hours of this have to be provided by an external provider.

In future, pension transfer specialists must be Level 4 qualified to provide advice on investments. The FCA pushed back the date by which PTSs must achieve these qualifications to October 2021 as a result of the COVID-19 outbreak.

Guidance consultation

Alongside the policy statement, the FCA also published a guidance consultation (GC20/1) setting out proposed changes to the non-handbook guidance to support the development of good practice and processes within firms. Once finalised, the FCA is expecting adviser firms to use the guidance to enhance their own existing processes.

The FCA provides examples of good and poor practice on various areas of DB transfer advice – including triage and suitability reports.

The FCA is also consulting on a scheme data template designed to help advisers understand what data they need to get from a DB scheme.

New data collection requirements

The FCA will be collecting new types of data from firms, including on areas such as triage and personal indemnity insurance (PII). This new data will be reported from April 2021, so firms need to start collecting it from October 2020.

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