

Improving the quality of pension transfer advice

A summary of the FCA's final rules and guidance

In March 2018, the regulator announced a new consultation on improving the quality of pension transfer advice (CP18/7). Following feedback from advisers and pension providers, the FCA have now published the final rules and guidance relating to advice in this area. Here we briefly summarise the key points from the [FCA's Policy Statement \(PS18/20\)](#) issued in October 2018. Unless otherwise stated, the new rules/guidance come into force immediately.

We do not cover all the new rules and guidance and so we recommend that firms advising on pension transfers and those acting as Pension Transfer Specialists read the full text to see how they may be affected.

This Policy Statement follows on from PS18/6, which gave new guidance relating to advising on pension transfers in March 2018 (most of these new rules came into force on 1 April 2018). Importantly, the 'starting assumption' that a transfer will be unsuitable remained in place. A [summary](#) of the changes announced in PS18/6 is available on our website.

Policy Statement 18/20: Improving the quality of pension transfer advice

Key points from PS18/20:

Standards to meet before giving advice

- All Pension Transfer Specialists (PTSs) must hold the Level 4 RDR qualifications for advising on investments before they can advise on or check pension transfer advice. Holding this qualification, as well as the PTS qualification, will ensure advisers have sufficient knowledge to assess the suitability of a transfer, including the risk, returns and charges of the proposed scheme and the underlying investments
- A PTS should hold the new qualification as soon as practically possible and by no later than 1 October 2020. There will be no automatic transition – to continue practising after this date a PTS must have achieved the investment qualification
- The rules will continue to permit an adviser who does not meet the PTS requirements to provide pension transfer advice, as long as their advice is checked before the client is given a suitability report
- Firms are responsible for reviewing the competence of their employees on a regular basis and the FCA believe it is very important for a PTS to keep up to date with current thinking and market trends. Firms therefore need to act to ensure their staff remain competent for their role, particularly where an adviser has not been involved in pension transfers for some time or only advises on occasional cases. The FCA is therefore giving further thought to the question of minimum CPD requirements
- The Appropriate Exam Standards for the PTS qualification (ApEX 21) have been revised to reflect the FCA's updated rules and guidance, as well as more widespread changes to the pensions environment, such as the introduction of the pensions freedoms
- The FCA decided not to change the definition of a pension transfer at this time (the proposal had been to include reference to safeguarded and flexible benefits). The regulator is investigating other ways to simplify and clarify the definition.

Preparing to give advice

- When advising on a pension transfer, the advice must take account of the proposed destination of the transfer funds (both the proposed scheme and investments)

- The rules do not prevent two separate advisers providing the transfer advice and the advice on the proposed receiving scheme and its investments. However, the FCA expect the two advisers to work with the same information about the client and have robust processes in place to ensure that this happens. Both parties should therefore work together to:
 - Collect the necessary information to inform the transfer advice and associated investment advice
 - Undertake risk profiling which assesses the client's attitude to transfer risk and investment risk
 - Recognise that the investment advice should consider the impact of the loss of any safeguarded benefits on the client's ability to take on investment risk.
- When a firm operates a two-adviser model, they should make this arrangement clear to the client. The client needs to understand the roles of both advisers, their respective charging structures and the complaints process
- The FCA's rules and guidance do not prevent firms from advising self-investors (clients who choose their own proposed schemes and investments). Where this is the case, the FCA have the following expectations:
 - Advisers should take account of the proposed destination of the funds (the client needs to be clear that they should provide the necessary information on the scheme and its underlying investments). The adviser must have a clear view on the destination scheme and the long-term investment strategy - this is so they can take account of the risks, expected returns and charges which support the pension transfer advice
 - Where a transfer is unsuitable in principle, but not specifically because of the proposed destination, the adviser should explain the basis for their recommendation
 - Where a transfer is unsuitable specifically because of the proposed destination, the adviser should explain that a transfer may be suitable if the client selects a different destination for the funds
 - If the adviser gives an opinion on how to amend the proposed destination, this is likely to be investment advice (Perimeter Guidance (PERG) 8.28.1G)
 - Where there is uncertainty about the client's future intentions or the relevant information about particular asset classes is not available, an adviser should not advise on the transfer.
- The FCA intends to proceed with their proposed perimeter guidance on triage (where a firm provides information and holds an initial conversation with a potential client so that they can decide whether they want to take advice). This clarifies the boundary between advice and guidance - the regulator has found some forms of triage stray into providing a personal recommendation rather than just giving generic information. The perimeter guidance on triage comes into force on 1 January 2019:
 - If triage is to be a non-advised service, it should be an educational process so that the prospective client can decide whether to proceed to regulated advice. Firms can achieve this by providing generic, balanced information on the advantages and disadvantages of pension transfers
 - If the firm wishes to avoid giving advice, it should not comment on whether the client should consider a transfer based on any information about the client's personal circumstances (should the client pass this information on during the triage stage)
 - The FCA do not consider that re-stating the starting assumption of unsuitability is giving advice, if given as information about the FCA's view on pension transfers
 - The regulator considers it good practice for firms to keep records where they have provided triage.

Providing advice

- The FCA is proceeding with their proposals on assessing a client's attitude to transfer risk. So, when considering a client's attitude and understanding of giving up safeguarded benefits for flexible benefits, an adviser should take the following into account:
 - a) The risks and benefits of both staying in the safeguarded benefit scheme and transferring to a flexible benefits scheme
 - b) The client's attitude to certainty of income throughout retirement
 - c) Whether the client is likely to access funds in flexible benefits in an unplanned way and the impact this would have on sustainability of the funds over time
 - d) The client's attitude to any restrictions on their ability to access funds in a safeguarded benefits scheme
 - e) The client's attitude to and experience of managing investments themselves or paying for them to be managed in a flexible benefit scheme.

In addition, the regulator has stated that clients also need to be told about other risks such as longevity risks and investment risks. Insolvency risk should also be covered in a balanced way so that any client biases and misconceptions are managed, for instance regarding the benefits provided by the Pension Protection Fund:

- If a firm uses a risk profiling tool or software to assess a client's attitude to the risks detailed above, they should check that the tool or software takes these factors into account. If not, then the firm should determine the client's attitude to transfer risk in other ways
- When a firm asks a client about their attitude to transfer risk, they should communicate in a way which is fair, clear and not misleading
- The regulator confirmed that firms should provide:
 - A suitability report regardless of the outcome of the advice (one should be issued even where the recommendation is not to transfer or convert)
 - An advice confirmation for both positive and negative recommendations.
- The FCA is proceeding with their proposals regarding the pension increase assumptions to be used for the Transfer Value Comparator (TVC). Full details of the changes can be found within PS18/20.

Charging structures associated with advising on pension transfers

In CP18/7, the FCA sought views on a number of questions relating to different charging structures used in pension transfer advice (they did not propose rule changes). A particular focus was on contingent charging, where an adviser is only paid if a transfer takes place or where they receive a significantly lower amount where a transfer does not take place.

The FCA's view was that contingent charging can result in cross-subsidies which benefit those clients who do not transfer and that there is an inherent conflict of interest in a transaction contingent model. The regulator did acknowledge though that the causal link between contingent charging and unsuitable advice is not clear-cut. Given the potential harm to consumers, the regulator stated that they were considering whether to intervene in the way charges are levied for pension transfer advice, including potentially banning contingent charging.

Within PS18/20, the FCA provided an update which included:

- Respondents' views were typically polarised in favour of and against a ban on contingent charging, with a small majority arguing against a ban
- Those in favour of a ban saw contingent charging as a cause of conflicts of interest. They considered that they incentivise a recommendation to transfer and drive a significant portion of unsuitable advice. Some also felt contingent charging models overstate the true cost of advice for those proceeding with a transfer due to the cross-subsidisation of costs benefiting those who do not transfer
- Those who were against a ban on contingent charging were largely concerned about the availability of advice in the future. In particular, they suggested that vulnerable consumers may not be able to access advice and many others (who are income-poor but pension-rich) may be prevented from accessing the pension freedoms. As a result, they felt that the Defined Benefit advice market could become the preserve of only wealthy consumers. Many also stated that there was no evidence of a causal link between contingent charging and unsuitable advice
- The FCA recognises the complexities surrounding charging for pension transfer advice. As a result, and because of the significance of this issue to all stakeholders in the market, they have stated that they need to carry out further analysis of the issues before deciding whether intervention is necessary. If they do consider that changes are appropriate, they will consult further on any new proposals in the first half of 2019. However, firms should be aware that the FCA already have rules and guidance in place that cover both conflicts of interest and charges disclosures
- Respondents highlighted that the way Value Added Tax (VAT) is charged in relation to product intermediation and pension transfer advice might be driving the use of certain charging models and could benefit from clarification. The FCA is speaking to HMRC to clarify the position.

For more insights and analysis relating to pensions and the wider retirement landscape, visit the [Technical matters](#) area of our website at fundsnetwork.co.uk

Important information

This document provides information and is only intended to provide an overview of the current law in this area and does not constitute financial advice, tax advice or legal advice, or provide any recommendations.

The value of benefits depends on individual circumstances. Withdrawals from a pension will not normally be possible until age 55.

Different options may have different effects for tax purposes, different implications for pension provision and different impacts on other assets and financial planning.