

# Pension transfer advice: contingent charging and other proposed changes

Summary of the  
FCA's Consultation  
Paper  
CP19/25

The pension freedoms introduced in 2015 have given consumers with defined contribution (DC) pensions more flexibility in how and when they can access their savings. As a result, a significant number of consumers with defined benefit (DB) pensions have transferred their savings to DC schemes, after taking mandatory advice.

The FCA believes that DB pensions offer extremely valuable benefits and that most customers would be best advised not to transfer. However, research has shown that 69% of consumers are advised to transfer. The regulator thinks this is too high and that many transfers have not been in the best interests of the consumer. Accordingly, the FCA considers that it needs to intervene to protect consumers and are consulting on a range of proposals relating to transfer advice. These are outlined in a Consultation Paper (CP19/25) and firms have until 30 October 2019 to pass on their comments to the regulator.

Here we briefly summarise the key points from the paper, although we recommend firms [read the full text](#) to see how they may be affected by the proposals.

## Ban on contingent charging

The FCA believes much of the poor advice on pension transfers is driven by conflicts of interest in the way advisers are remunerated. They are particularly concerned about the practice of contingent charging. In its purest form, this is where an adviser is only paid if a transfer or conversion takes place. The alternative to a contingent charging model is where the same amount is charged for advice, regardless of whether a transfer or conversion takes place or not. Many firms use hybrid contingent models that include some degree of contingent charging.

- The FCA thinks that the best way to reduce the scope for conflicts of interest and the potential harm caused by unsuitable advice is to ban contingent charging. This will require firms to charge the same amount for advice on pension transfers and conversions, irrespective of whether the advice results in a recommendation to transfer (or convert) or not.
- The requirement will incorporate all related and associated charges such as advice on where any transferred funds will be invested and implementation charges. To prevent gaming the ban, it will also apply across two-adviser models where one adviser advises on the transfer and another on where the fund might be transferred.
- This policy should discourage higher-risk firms from operating in this market. If firms believe they need to charge more for transfer advice, due to the risk of it being unsuitable, they should reconsider whether they are competent to provide suitable pension transfer advice at all.
- To mitigate the effect of the interventions on those who cannot afford advice, the regulator has identified groups of customers for whom a transfer or conversion is likely to be in their best interests, due to specific personal circumstances. These include those customers who have a specific illness or condition resulting in a materially shortened life expectancy and those facing serious financial hardship.
- The FCA proposes to exempt these 'carved out' customers from the ban on contingent charging, although they should not pay more for transfer advice than other consumers. Having identified a client who falls within one of the groups, if the adviser wishes to apply the carve-out, it should be made clear to the client before the advice process continues.
- The regulator has decided to rule out alternative measures, such as setting a monetary price cap on contingent charges, more prescriptive systems and controls for managing conflicts of interest and requiring separate firms to give the transfer advice and related investment advice.

## Triage and abridged advice

Many advisers operate a triage service before they give DB transfer advice. This is where an initial conversation is held with the customer where factual information is given about the features of safeguarded and flexible benefits. The purpose is to enable customers to decide whether to take advice on the transfer or conversion of their pension benefits. However, during a previous review of firms' triage services, the FCA found that some forms of triage may be crossing the advice boundary.

- It remains the FCA's view that, as a non-advised service, triage should be an educational process that enables consumers to decide whether to proceed to regulated advice. If advisers give a professional opinion based on the client's circumstances that steers the client towards keeping or giving up their safeguarded pension benefits, they are likely to be crossing the advice boundary. The regulator is not able to change the advice boundary as it is set in legislation.
- Some firms have asked whether decision trees or traffic-light RAG-rated questionnaires can be used within a non-advised triage service. The way an adviser ranks the information gained through using these could suggest that the consumer takes one course of action over another (to transfer or convert, or not). For this reason, the FCA believes that decision trees and RAG-rated questionnaires are likely to lead to advice, so should not be used within a triage service.
- Given the limitations of triage, and the implications of the proposed ban on contingent charging, the FCA is proposing to introduce 'abridged advice'. This will act as a new mechanism to filter out those consumers for whom a pension transfer or conversion is unlikely to be suitable, before they pay for full advice. Firms will not be required to offer abridged advice but, if they do, it may only be offered for safeguarded benefits that require a Pension Transfer Specialist (abridged advice must be carried out or checked by a PTS).
- Abridged advice includes the initial stages of the usual advice process. The regulator would expect the adviser to conduct a full fact-find and risk assessment, including an assessment of the client's attitude to transfer risk in line with their guidance on assessing suitability. Based on this analysis, the adviser may provide the consumer with a personal recommendation not to transfer or convert their pension if they can demonstrate this is unlikely to be suitable.
- This recommendation can be made without an adviser having to collect detailed scheme data, undertaking an Appropriate Pension Transfer Analysis (APTA) or providing a Transfer Value Comparator (TVC). This should enable abridged advice to be provided cost-effectively.
- An adviser can only provide a personal recommendation not to transfer or convert their pension through abridged advice. This must be communicated to the client before the adviser initiates the process. The only other outcome is that abridged advice is insufficient to draw any conclusions on whether to make a personal recommendation to transfer (or convert) or not.

- The FCA has set out the information advisers may consider for the purposes of abridged advice. This is likely to include:
  - High-level health information to ascertain if the client has a materially reduced life expectancy.
  - The client's attitude to transfer risk including their capacity for loss.
  - The client's attitude to investment risk and their relevant knowledge and experience of investments.
  - A high-level understanding of the client's financial and family situation.
  - Other relevant information such as whether the client is relocating overseas.
- Based on the information collected through the abridged advice process, if it is unclear whether the client would benefit from a pension transfer or conversion, the adviser must check if the client wants to continue to full advice, and if they understand the associated costs.
- Advisers will need to prepare a suitability report, as they do for any other personal recommendation, and they will be liable for the advice provided.

## Prioritising DC workplace pension schemes

- The FCA believes that there is a significant conflict arising where clients sign up for an ongoing advice proposition. This can result in charges being paid throughout a 20 to 30-year retirement period when a consumer transfers from a DB to a DC scheme. The regulator is therefore consulting on proposals to address the conflict of interest created by ongoing charges.
  - The regulator has stated that if advisers recommend a default fund in a workplace pension scheme (WPS) as the receiving scheme, it's likely that a transferring member will not require advice again until decumulation. Product charges would also be capped at 0.75% each year. The result would be considerably lower charges than for other options.
  - The FCA considers that if a transfer from safeguarded to flexible benefits is suitable, a default option within a WPS (if available) is more likely to be a suitable destination option for many consumers.
  - If a WPS is not recommended, the regulator is proposing to require firms to demonstrate why the scheme they recommend is more suitable than a WPS. They have set out circumstances that they consider are valid reasons for not considering a WPS:
    - The client does not have access to a default fund with capped charges within a DC WPS either as an active or deferred member.
    - The scheme does not accept transfers in.
    - The advice sets out why and how the member will access the funds within 12 months of decumulating, and the WPS is incompatible with the way the pot will be accessed.
    - The member can demonstrate prior evidence of investment activity through an adviser or active investment choices as a self-investor (excluding investment in a mortgage endowment policy or a default fund of a WPS).
- The FCA has also set out guidance on circumstances that they consider are not valid reasons for considering a WPS in most cases:
    - The member is more than 12 months from starting to decumulate.
    - The member is within 12 months of being able to decumulate but it remains unclear if or how they will access a transferred pot at that time.
    - Insufficient fund choices.

## Empowering consumers

The FCA are concerned that charges are unclear and consumers do not fully understand the implications of the advice they are given. A range of proposals have been made to help tackle these issues.

- Before firms provide regulated advice on a transfer or conversion requiring a PTS, the FCA is proposing that they must send a letter of engagement that sets out in monetary terms the amounts that would be paid under the various scenarios for both abridged and full advice.
- If an adviser operates the 'carve-out' and knows that a potential client would be eligible for non-contingent charging, the letter must explain:
  - The reasons for this.
  - That no charge would be payable in the event of a recommendation not to transfer or convert.
- If an adviser offers abridged advice, the letter must explain that a consumer will not be able to undertake a transfer if they have only received abridged advice.
- An FCA review has highlighted that many suitability reports are too long with unclear recommendations. To address this, the regulator is proposing that firms must include a one-page summary at the front of all transfer suitability reports requiring a PTS. This proposal also applies to pension conversions. This summary must include the following:
  - Charges disclosure – advisers must disclose ongoing advice and all product charges they expect to levy in the first year if a transfer or conversion goes ahead, presented in pounds and pence, alongside the charges associated with the client remaining in their current DB scheme. If a client's WPS is not used as the destination scheme, the adviser must also provide a disclosure of the charges associated with a transfer into their WPS. Any first-year contingent charges must also be presented as a percentage of the client's DB scheme income in today's terms, so that the client can see the proportion of DB income that might be given up to charges if they were to transfer.

- The wording of the adviser’s recommendation must clearly set out whether the consumer should transfer (or convert) their pension or not.
- A statement of the risks associated with the transfer or conversion. The client must be invited to provide a signature in the one-page summary to confirm that they understand the risks disclosed to them.
- Information about any ongoing advice service provided if the adviser proceeds with the transfer or conversion. The client must be informed that they are not required to take this service, and that they may cancel at any time. The monthly and annual charges associated with this service must also be disclosed in pounds and pence.

The one-page summary should also state whether the service provided is abridged or full advice. Where a positive recommendation to transfer or convert is made, the FCA is proposing new guidance that a firm must gather evidence that the client can demonstrate that they understand the risks to them of proceeding with a pension transfer before finalising the recommendation and keep a record of this evidence. If the client is not able to demonstrate this, or declines to sign the summary confirming their understanding, then the adviser should generally not make a recommendation to transfer.

## Enabling advisers

The FCA wants to raise standards by improving the levels of knowledge and understanding of Pension Transfer Specialists (PTSs) who give or check advice on pension transfers.

- The regulator is proposing that a PTS must undertake a minimum of 15 hours CPD each year, focused specifically on pension transfer advice. This would be in addition to any other existing CPD requirements for other types of advice.
- At least five of the 15 hours must be provided by resources external to any firm that employs or contracts services from the PTS. This will ensure that a PTS is not just receiving a ‘house view’ of the market.

For more insights and analysis relating to pensions and the wider retirement landscape, visit our ‘Technical matters’ area.

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### 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. This document represents a summary of our understanding of the relevant regulations at the date of its last review (August 2019). Regulations and guidance are often subject to change and may change in future. Individuals should check that rules and regulations have not changed. Issued by Financial Administration Services Limited, authorised and regulated by the Financial Conduct Authority. Fidelity, Fidelity International, FundsNetwork™ and their logos are trademarks of FIL Limited. UKM0819/24435/SSO/0820

## Effective regulation

The FCA wishes to establish new data collections from advice firms to improve their ability to regulate the sector. The regulator has proposed changes in the following areas:

- To create a new section of the RMAR regulatory return (RMA-M) covering data on DB and other safeguarded benefit advice.
- To amend the existing data collected on intermediaries’ professional indemnity insurance cover within the existing quarterly RMA-E submission, FSA031, FSA032, and FIN-APF, so that they have better data about the PII cover of all firms that offer retail intermediation.

## Technical amendments

The regulator is consulting on changes to the pension transfer definition and has set out technical proposals to clarify to firms how to apply their rules and guidance in practice. The proposed changes include:

- Clarifying and amending the TVC.
- Additional factors firms should incorporate in cashflow modelling (where used).
- Clarifying how the pension transfer rules should be applied to retirement annuity contracts.
- How to use estimated transfer values for initial advice.
- Clarifying the application of adviser charges.
- Explaining the scope of arranging a transfer.

## FundsNetwork’s reaction to the FCA’s proposals

We understand the FCA’s desire to ensure that customers get high-quality advice for critical decisions such as whether to transfer out of their defined benefit pension arrangements. This move will surely go some way to tackling some of the poor practices they have observed in pockets of the market. However, we do remain concerned that the proposals will do little to solve the equally pressing issue of lack of access to, or take-up of, financial advice by consumers who could undoubtedly benefit from the experience. Indeed, in some regards, they could even contribute to the problem. We very much hope to see these issues addressed further in the final policy statement and the forthcoming Financial Advice Market Review.