



FCA consultation on pension transfers – what does it mean for advisers?

June 2017

The FCA threatened it and now we have it – on 21 June the FCA published its consultation paper on DB transfers and safeguarded benefit conversions. The FCA says that the proposed new rules “outline the FCA’s expectations of advisers and pension transfer specialists to ensure that consumers receive advice which considers all relevant factors”.

The proposals represent an overhaul for the current pension transfer rules including the removal of the assumption that a transfer is not in a customer’s best interests and the replacement of transfer value analysis with a new “appropriate pension transfer analysis”.

What’s behind the consultation paper?

DB transfers and safeguarded benefit conversions (ie moving from pensions with an underpin) have dominated the news over the last few months. We already know that the FCA is carrying out a desk-based study into advice firms engaged in a “significant” amount of DB transfer business, 54 advice firms have voluntarily agreed to suspend any advice on pension transfers, the FCA published an alert in January 2017 after seeing some cases of “poor advice”, and levels of DB transfers are said to be at unprecedented levels in the wake of the pension freedoms introduced in April 2015. On top of this we have the FCA’s review into the redress methodology applicable to unsuitable DB transfers.

It is clear from all of this activity that the FCA is heavily engaged in this area and is already taking significant action. Also the FCA acknowledges that, given the advent of pension freedoms coupled with historically high transfer values given low gilt yields, the FCA’s pension transfer rules should reflect this changing economic and legislative environment.

The FCA’s paper attempts to address all of these issues.

What are the proposals?

The proposed changes include:

Replacing the current transfer value analysis with a broader analysis of a customer’s needs and circumstances.

The papers identifies a number of concerns with the current transfer value analysis (TVA) requirements (the TVA is based on an analysis of what the customer is giving up and premised on the customer purchasing an annuity at retirement).

Any comments or queries?

Robert Morris Partner

+44 20 3060 6921
robert.morris@rpc.co.uk

Rachael Healey Legal Director

+44 20 3060 6029
rachael.healey@rpc.co.uk

The FCA's concerns with the TVA include advisers focusing almost exclusively on the TVA rather than a rounded assessment of suitability and some using the TVA as a "tick-box" exercise. The paper also acknowledges limitations of the TVA in that (1) it is not a helpful tool for customers approaching their normal retirement age, (2) the critical yield is not widely understood by consumers and (3) customers are frequently shown a range of critical yields depending on how and when they take their benefits and this can be particularly difficult for consumers to understand.

Given these limitations and concerns the paper proposes to replace the current TVA, on the basis it "is no longer leading to the best outcomes for consumers", with an overarching requirement to undertake an appropriate analysis of the client's options, labelled the "appropriate pension transfer analysis" or "APTA".

The paper proposes new rules for APTA including (1) an assessment of the client's outgoings and potential income needs throughout retirement, (2) identifying the role of the ceding and receiving scheme in meeting those income needs (including a "transfer value comparator") and (3) consideration of death benefits on a "fair basis". The proposed rules for the new APTA are not going to be prescriptive or exhaustive; with the emphasis on advisers adopting an approach relevant to the customer's personal circumstances.

Part of the new APTA is the "transfer value comparator". This is broadly a reflection of the current TVA, requiring a projection of the ceding scheme's benefits to normal retirement date and estimated cost of purchasing those benefits using an annuity, but rather than calculating a percentage growth required to meet the DB benefits at retirement, it requires, in instances where the customer is more than 12 months from their scheme retirement date, a determination of the present monetary value needed today to fund an annuity matching the benefits in the ceding scheme at retirement.

So, instead of focusing on what investment return a customer needs to match their DB benefits in retirement, the transfer value comparator requires an adviser to compare the transfer value with the amount the customer would need in order to buy a guaranteed income on the open market at the same level as that provided by the DB scheme – the example used is a transfer value of £120,000 compared to the cost of £140,000 to obtain a comparable level of guaranteed income on the open market – this leaves a measurable "loss" to the customer of £20,000.

The paper acknowledges that the approach maintains the cost of an annuity as a reference point where annuities are decreasingly the pension option of choice for customers at retirement, but the FCA considers that "the notional annuity purchase" is more likely to be understood by consumers as a "proxy to determine the value that might be gained or lost by giving up the safeguarded benefits".

The paper also distinguishes between a client's "objectives" and their "needs" noting that a recommendation is unlikely to be suitable if it meets the client's "objectives" but not their "needs".

A rule to require that all advice is provided as a personal recommendation fully reflecting the client's circumstances and providing a recommended course of action.

The paper notes the FCA's concern that in some cases advisers have claimed that they are not giving a personal recommendation and as a result advice did not comply with the Handbook. The FCA does not consider it appropriate for advice on a DB transfer or conversion of safeguarded benefits to be conducted without a personal recommendation, albeit the paper says these standards will not be applied retrospectively.

Updating the FCA's guidance on assessing suitability when giving a personal recommendation to convert or transfer safeguarded benefits, including removing the assumption that a transfer will be unsuitable.

The paper specifically states “... for some consumers a transfer may now (post April 2015) be suitable when it wasn't previously...” and as a result the assumption against transferring is to be removed and replaced with a statement that for most customers retaining safeguarded benefits will be in their best interests and advisers should have regard to this. The onus is also going to be on advisers to demonstrate that the transfer is in the best interests of the client. Additional guidance is also to be provided setting out what an adviser should consider when providing a personal recommendation including (1) a client's income needs and expectations and (2) the way in which funds will be accessed either immediately or in the future.

Introducing guidance on the role of a pension transfer specialist.

Under COBS 19 a pension transfer specialist should either give the personal recommendation or check the advice. The paper notes that this requirement does not specify what is intended by “check” and that in some cases the FCA has seen the pension transfer specialist simply running the TVA. The FCA's expectation is that the pension transfer specialist assesses the reasonableness of the personal recommendation reached by the adviser and to clarify this expectation the definition of a pension transfer specialist is to be amended **but** the amended definition “will not be used to judge the past activity of pension transfer specialists”.

Outsourcing advice

The paper also comments on the “outsourcing” of both the checking and advice functions of pension transfer specialists noting that these issues are addressed in the current rules. The paper provides that (1) if the “checking” of the transfer advice is outsourced then the adviser giving the overall advice remains responsible for the suitability of the advice including what has been checked by the pension transfer specialist and (2) if the “advice” is outsourced both firms have the burden to demonstrate that the advice **they** give is suitable for the client but

the FCA expects the firms to speak to each other given the impact on each other's advice.

Other Issues

In addition to these proposed changes the paper also addresses:

- **Insistent clients** – reference is made to the FCA's 2015 factsheet, that there is no Handbook definition of an “insistent client” and at present it remains for “an adviser to decide whether they will process a transaction that goes against a recommendation they have given”. A separate consultation is to take place to introduce Handbook guidance based on the FCA's factsheet for insistent clients.
- **Overseas transfers** – the paper acknowledges that individuals transferring benefits abroad may need to consult in both the UK and the destination country for the transfer. The paper notes that the new requirement that the firm advising on the transfer has to make a personal recommendation “may mean that the UK adviser involved in the transfer takes on greater responsibility than they currently do”.

What next?

This is an area which has attracted increasing levels of industry interest and concern for pension advice firms and their PI insurers. Hopefully the paper provides some much needed guidance for those advising on pension transfers and some comfort for insurers. In particular the comments on “outsourcing” of transfer advice are likely to be useful, as is the move away from the presumption against transfers. However, the fact that the new APTA is not going to include an exhaustive list of issues and instead will leave this to the adviser may cause concern for some. The consultation period closes on 21 September 2017.

If you have any queries or want to discuss the paper further, please contact Robert Morris or Rachael Healey.

Click [here](#) to view the consultation.

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