Consultation response

DB to DC transfers and conversions

April 2015
Introduction

We consulted on defined benefit (DB) to defined contribution (DC) transfers and conversions guidance between 12 February and 17 March 2015 in advance of the major reforms to workplace pensions from 6 April 2015. This document summarises the feedback we received and changes we have made to the guidance as a result.

We received 53 responses from representative and professional bodies, employers, trustees, advisers and individuals. A full list of the respondents is included in the appendix. We are grateful to everyone who responded to our consultation during this period of intense change.

The consultation proposal

The guidance is intended to assist trustees of DB schemes to manage transfer requests and their impact. In particular it gives an overview of the requirements for transfers and conversions of benefits after 6 April and sets out the requirement for trustees to check that DB members wishing to transfer benefits have obtained appropriate independent advice before a transfer is processed.

We invited general comments on the content and asked three specific questions:

- Does the guidance cover issues DB trustees will need to manage in the transition to new pension flexibilities? If not, what has not been addressed?
- Does the guidance describe the good governance needed to balance the interests of members and effectively manage transfers from April 2015? If not, what should be included?
- Does existing technical guidance enable DB trustees to respond to the new pension flexibilities? If not, what additional information would be helpful?
**Comments received and our response**

Generally, respondents welcomed the guidance as a basis to prepare for the reforms and to understand the new financial advice requirements. The material was considered accessible for trustees and there was also broad agreement that the issues we identified are likely to be those trustees will need to manage.

The consultation guidance reflected provisions of the Pension Schemes Bill 2014-15 at that time. Due to the timing of our consultation, there was a degree of inconsistency between the draft guidance and the secondary legislation that was subsequently published. These have now been corrected – in particular, our description of the information that must be provided to members regarding the requirement to take appropriate independent advice and the circumstances in which an employer will be required to arrange and pay for advice. We believe that the amendments needed to reflect the finalised legislation do not represent a material change to our original proposal and therefore further consultation is not needed on the final guidance.

A number of respondents pointed out that, despite the benefits of referencing other relevant material, our guidance on transfer-related issues and the new pension flexibilities will be spread across different documents. We have set out that we will review our guidance on transfers in 2016 in light of experience and agree that, through this process, the consolidation of material will be beneficial to trustees and their administrators.

Our consultation proposal intended to set out in an accessible way a number of the technical changes to a member’s statutory transfer rights and the introduction of the new concepts of safeguarded and flexible benefits. To make the draft guidance accessible, for the most part we adhered to the more familiar terms ‘DB benefits’ and ‘DC benefits’. Some consultation responses highlighted concerns with overlap in the legislative definition of the new benefit categories and that the draft guidance had oversimplified the detail of the legislation. We have therefore included additional, but non-exhaustive, guidance regarding the new definitions that apply to the requirement to obtain appropriate independent advice (ie safeguarded and flexible benefits) and how to deal with uncertainty about the treatment of them, as well as explaining the new categories of benefit applicable to statutory transfers.
Comments received and our response

Respondents also requested additional guidance in the following areas:

- **The conversion of safeguarded benefits within schemes:** We have included additional information on the conversion of safeguarded benefits into flexible benefits within the scheme and noted that this is likely to be subject to requirements under section 67 of the Pensions Act 1995. We have also clarified that the requirement for a member to obtain appropriate independent advice applies to conversions or internal transfers. Where members are converting to DC benefits within a scheme there is no obligation to provide the new decumulation options permitted after 6 April 2015. It is up to trustees and employers to determine which options to offer and to amend their rules accordingly.

- **The transfer of safeguarded benefits worth £30,000 or less:** We have included additional guidance on the exemption from the requirement to obtain appropriate independent advice and information that must be made available to members in such circumstances.

- **Transfers made under the scheme rules rather than the exercise of a member’s statutory right:** We have included additional guidance on the possibility of trustees permitting non-statutory and/or partial transfers (where scheme rules permit this) and suggest a consistent approach for the treatment of statutory and non-statutory transfers.

- **Circumstances where an employer must pay for appropriate independent advice:** We have provided additional guidance on trustee responsibilities.

The majority of respondents offered general comments in response to the draft guidance and, as a result, we have set out the headline issues by theme, together with our response.

**Transfers and the member’s best financial interest**

A number of responses queried whether we had formed an appropriate view on the merits of members transferring their safeguarded benefits. For example, responses suggested that:

- we should not convey, implicitly or otherwise, that a transfer would be inherently bad
- taking such a position was unhelpful to trustees who must still carry out a legitimate transfer request
- the new pension flexibilities introduced situations where some members would be best served by transferring their benefits
Comments received and our response

Our response

It remains our view that the best financial interests of the majority of members will be served by remaining in their DB scheme, which is consistent with the government’s response to the consultation on freedom and choice in pensions. We have, however, updated our guidance in light of the comments we received to make clear that where members satisfy the legislative requirements, they have a statutory right to transfer one or more categories of their benefits to another scheme and, in general, trustees cannot prevent a member from transferring in these circumstances. We are also clear that there may be situations where it can be in the member’s interest to transfer their benefits or that accessing their benefits may be a higher priority for them than a pension provided by their DB scheme.

Information made available by schemes

Respondents suggested that the draft guidance was unclear on the information that could be made available by the scheme to a member’s adviser. It was also suggested that the adviser and member should be provided with information on the scheme’s view of employer covenant. Further guidance was requested on how trustees might consider automatically providing transfer value estimates to active and deferred members as part of their retirement processes. This was particularly pertinent given the implications of the obligation on the employer to pay for financial advice where the request to transfer is employer-instigated.

Our response

We agree that it is appropriate for a scheme to make certain information available to an adviser as a way of assisting member decision making and have clarified that we expect schemes to make available information that is normally available to the member. In addition, we have clarified how schemes also offering flexible benefits can provide information about retirement choices and what the main information requirements attached to the different stages of a statutory transfer are.

We have considered the implications of providing information about employer covenant to authorised independent adviser. We have decided not to include this specifically in the final guidance. Making available, for example, the most recent covenant report is unlikely to be appropriate given the particular purpose of these reports in supporting scheme valuations and the associated risks of divulging the employer’s confidential or price sensitive information. This could adversely affect trustee and employer cooperation, which is a core principle in managing scheme funding. It is also unclear to us whether, generally, the information would be of use to an adviser when advising a member about a transfer of safeguarded benefits.
We agree that it will be important for members to have clear information to support them making informed decisions. We are interested in the potential for standardised scheme information to be made available as a means of further supporting members wishing to transfer and improving governance, and would be interested in discussing this further. We consider it appropriate for trustees to make available information that simply explains all the options available to members, for example, in scheme booklets or as part of an annual benefit statement. However, this will not necessarily be straightforward to achieve and care will continue to be needed to avoid placing emphasis on one option over another.

**Administration and due diligence**

There was agreement with our description of the role and responsibility of trustees and expectations on checking whether a member has obtained appropriate independent advice.

However, a number of respondents suggested that the draft guidance was ambiguous regarding our ‘due diligence’ expectations to check a receiving scheme is legitimate, how to check the Financial Services Register, and the associated expectation for retaining records of these checks. There were also requests for practical guidance on how to check the Financial Services Register.

A number of concerns were expressed over our suggestion that a scheme should conduct additional periodic checks by contacting advisers directly. Respondents said that the purpose of this suggestion was unclear and any additional requirement would go beyond what is necessary to comply with legislation.

**Our response**

Trustees play a crucial role in helping members protect themselves against pension scams. We have included detail on our pension scams action pack for trustees and administrators, which provides a basis for conducting appropriate checks on receiving schemes. Since our consultation began, representative bodies from across the pensions industry have published a code of good practice that sets out due diligence processes to combat pension scams. Details on this code are now referenced in the guidance. We have included additional details on the practical steps trustees can take when checking the Financial Services Register to determine whether the authorised independent adviser has the requisite authorisation.
Comments received and our response

We agree with the need to clarify both the purpose and our expectations for suggesting additional checks. We are clear that by suggesting this that we are not expecting trustees to obtain a member’s advice or to scrutinise any details of the recommendation. However, we do consider it appropriate for trustees to be alert to the risk of pension scams and, in particular, the risk of fraudulent confirmation that advice has been provided by an authorised independent adviser when this is not the case. By undertaking further checks where suspicion is aroused, trustees could mitigate this risk. We believe this is a proportionate response to protect members and ensure good scheme governance.

Transfer values, scheme funding and investment

A majority of respondents were either silent on this issue or agreed that our existing guidance was broadly clear and applicable. We received divergent views on the potential impact on scheme liquidity suggesting that this would either be a significant problem and a key area for trustees to manage or that the majority of schemes would hold sufficiently liquid assets for the transfer values they will need to make. One respondent suggested that the default position should be that trustees reduce transfer values where the scheme is underfunded.

Our response

We agree that schemes will need to look afresh at their assumptions about transfers and conversions. However, in light of the comments received, we are content that the detail of our 2008 Transfer Values guidance, together with the core considerations set out in ‘Code of practice 3: Funding defined benefits’, provide an adequate basis for trustees to manage transfers and new flexibilities.

Again, we will revisit the adequacy of this guidance and associated considerations in light of experience – for example, in the event of significant demand by members to take statutory transfers, or non-statutory transfers either at or close to retirement.

Overseas transfers

We received questions on how members based overseas would be able to transfer their benefits and in particular how they would be able to access FCA-authorised advice. We were also asked how trustees should check overseas-based advisers’ credentials.
Our response

The guidance reflects changes to UK law. From 6 April 2015, before transferring to a DC scheme, qualifying recognised overseas pension scheme or other permissible arrangement, non-UK residents with safeguarded benefit pension rights must take appropriate independent advice from an FCA authorised adviser with permission to advise on ‘pensions transfers and pension opt-outs’ relating to safeguarded benefits. Where an advisory firm does not hold the relevant permissions on the Financial Services Register trustees will be unable to complete the member’s transfer.
Appendix: List of respondents to the consultation

Association of Consulting Actuaries
Aon Hewitt Ltd
Aquila Heywood
Arthur J Gallagher Wealth Management
Association of Pensions Lawyers
Association of Professional Pension Trustees
Aviva Life Services UK Limited
B&CE/The People’s Pension
Baker & McKenzie LLP
Barnett Waddingham LLP
BP plc
British Airways Pension Services Limited
Brooklands Pensions Ltd
BT Pension Scheme Management Limited
Capita Employee Benefits
Deloitte Total Reward and Benefits Limited
Ensign Pensions Administration
Hymans Robertson LLP
Individual respondent
Individual respondent
Individual respondent
Individual respondent
Institute & Faculty of Actuaries
JLT Benefit Solutions
KPMG LLP
Lincoln Pensions
Trustee from Jaguar Landrover Pension Trustees Ltd
Mercer
Pensions Rapport Ltd
PenTech Group
Prudential
PricewaterhouseCoopers LLP
QROPS Specialists (Bangkok)
RBS Pension Trustee Limited
Reckitt Benckiser Pension Fund
Royal Bank of Scotland plc
Sacker & Partners LLP
The Society of Pensions Professionals
Standard Life
Sterling Planners Pty Ltd (Australia)
SAUL Trustee Company
Syngenta Pensions Trustee Limited
The Law Society of Scotland
The National Association of Pension Funds
The Pensions Administration Standards Association
The Pensions Management Institute
The Royal Mint
The Spectrum IFA Group
Towers Watson
The Pensions Advisory Service
Trustee from unnamed scheme
UNISON Staff Pension Scheme
Waterstone Investment Associates Inc