DB to DC transfers and conversions
Introduction

The 2014 Budget announced reforms to workplace pensions to offer greater flexibility in the way individuals aged 55 and over can access their defined contribution (DC) pension savings.

Following public consultation on these reforms, the Government also confirmed that transfers out of funded public sector and private sector defined benefit (DB) schemes would continue to be permitted. In doing so, it acknowledged that the additional flexibility from 6 April 2015 for people with DC benefits may increase interest from members wishing to transfer from DB to DC pension schemes.

Two headline risks were recognised:

- That members may choose to transfer their benefits when it was not in their best financial interests, and
- A large volume of transfers could destabilise the DB scheme by crystallising liabilities.

In the Government consultation response, two mitigating safeguards were proposed:

- A new requirement that, from 6 April 2015, scheme members with safeguarded pension benefits of £30,000 or more in their scheme who wish to transfer these benefits to access their benefits flexibly must first get appropriate independent advice, from a Financial Conduct Authority (FCA) authorised adviser to understand the financial implications of the transfer, and
- Guidance to DB pension scheme trustees on reducing a member’s transfer value and how to apply for more time to carry out a transfer.

This consultation is in respect of the new guidance proposed for DB pension scheme trustees and also includes implementation of the requirement for appropriate independent advice. It is the first part of a package of communications to help trustees prepare for major pension reforms that will be implemented from 6 April. In addition, and to address the new pension flexibilities, the regulator is committed to publishing further guidance for trustees in early March, following publications of further regulations by the Department for Work and Pensions (DWP). This other guidance will address new requirements on how trustees should direct their members to the new Pension Wise service.

1 See para 6 of the draft guidance.
Background

The impact of flexibilities on individual schemes will vary depending on their position but general issues that DB trustees, with their advisers, are likely to face include:

- whether to commission a fresh assessment of the scheme’s funding position from the scheme actuary in light of the number of transfers and to consider the extent of the need for a reduction in transfer values due to funding levels.
- more members requesting information on their options to transfer
- more members choosing to transfer at age 55 or closer to retirement and thereby increasing the scheme’s liquidity requirements and impacting on its investment strategy
- greater interest from employers to promote such transfers to reduce their exposure to scheme risks
- some members choosing to transfer although it is unlikely that this will be in their best financial interests, and
- awareness of a heightened or changing risk of pension scams.

DB scheme trustees will need to ensure that the assumptions they use to calculate transfer values continue to be appropriate. Trustees should not wait to review and change assumptions if they consider this appropriate. They should also have adequate procedures in place to respond to member requests and the impact on the scheme.

Consultation proposal

Trustees have a duty to act in the members’ best interests. When approaching transfers, they must balance the interests of both the members wishing to exercise their right to transfer with those that wish to remain in the scheme.

The trustees’ duties and powers in respect of DB to DC transfers substantially remain as they were before the new pension flexibilities were confirmed. Importantly, the statutory basis for the calculation of transfer values also remains unchanged.

To assist DB pension scheme trustees in managing transfer requests and their impact, we are issuing overarching guidance to set out the major changes that will be in place from April and to highlight a number of important considerations and relevant existing technical guidance.

We believe our guidance will assist the trustees as the new pension flexibilities are implemented. However, we intend to review the guidance in 2016 in light of experience.
This consultation reflects the relevant provisions of the Pension Schemes Bill 2014-2015 and associated secondary legislation that will shortly be laid before Parliament by the DWP. If there are material changes in the legislation as currently drafted when it comes into force we will consider the extent to which the guidance may need further amendment and/or consultation.

**Your feedback**

We would like to hear from trustees and other interested parties. Any general comments are welcome but in particular:

- Does this guidance cover the issues DB trustees will need to manage in the transition to new pension flexibilities? If not, what is not addressed?

- Does this 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 the existing technical guidance provide sufficient flexibility for DB trustees to respond to new pension flexibilities? If not, what additional information would assist?

**Closing date and next steps**

This consultation document was published on 12 February 2015. The closing date for responses is **17 March 2015**.

Once the consultation period has closed, we shall consider the responses received and prepare a response with a view to publishing the final documents as soon as possible.

**Responding to the consultation**

You can respond to the consultation by email to: 

**DBDCTransfers@tpr.gov.uk**

Our preference is for email responses but alternatively responses to consultation questions can be sent to:

- Philip Worsfold  
  The Pensions Regulator  
  Napier House  
  Trafalgar Place  
  Brighton BN1 4DW

If you have any queries about this consultation, please call Philip Worsfold on 01273 662034.
We may need to share the feedback you send us within our own organisation or with other government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your comments to remain anonymous, please state this explicitly in your response. If you wish your response to be kept confidential, please make this known and we will take the necessary steps to meet your request. However, please be aware that, should we receive a formal request under the Freedom of Information Act, we may be required to make your response available. When responding, please advise whether you are responding as an individual or on behalf of an organisation (and, if the latter, which organisation).

**Government consultation principles**

For the purpose of this consultation paper, we are following the government’s consultation principles at [www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance). The key consultation principles are:

- Departments follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- Departments need to give more thought to how they engage and consult with those who are affected
- Consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy
- The principles of the compact between government and the voluntary and community sector continue to be respected.

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the policy issues raised) please contact us:

- by email to: philip.worsfold@thepensionsregulator.gov.uk
- by post to: Philip Worsfold, Policy Directorate, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. If you have any requirements that we need to meet to enable you to respond, please let us know.
DB to DC transfers and conversions guidance

Introduction

1. The greater flexibility now offered to members of defined contribution (DC) schemes to access their pension savings has the potential to increase the number of members of private and funded public sector defined benefit (DB) schemes requesting a transfer of their benefits.

2. We have prepared this guidance to assist DB pension scheme trustees and managers of private and funded public service schemes manage transfer requests and their impact. This guidance draws together a number of important considerations, and signposts trustees to our existing technical guidance. It provides a high level summary of the main requirements introduced by the Pension Schemes Act 2015 and our expectations in relation to these. In particular, it addresses the new requirement for trustees to check that a member has obtained appropriate independent advice before carrying out a transfer.

3. We believe it is likely to be in the best financial interests of the majority of members to remain in their DB scheme. A DB scheme provides a promised pre-determined level of benefits that are underwritten by an employer. It is also unlikely that the application of best estimate assumptions used to calculate the transfer value would provide benefits of equal value as those given up.

4. However, the ability to access pension flexibilities may lead some members, in the light of their individual circumstances, to seek to transfer their benefits. It is therefore essential that they are provided with the information needed to allow them to make informed decisions about their retirement planning.

5. The Pensions Schemes Act 2015 makes a number of changes to the transfer rights of members. Significantly, the right to transfer now applies in relation to a member’s specific benefit categories as opposed to all of the benefits under the scheme.

6. For the purposes of transfers, benefit categories are now defined as either ‘flexible’ or ‘safeguarded’:
   a. ‘Flexible benefits’ are broadly money purchase and cash balance benefits
   b. ‘Safeguarded benefits’ are benefits that are neither money-purchase nor cash balance.
7. Members that are more than one year away from their scheme’s normal pension age have the right to transfer their safeguarded benefits. Where a member has more than one category of benefit in the scheme they will be able to transfer out either:

a. all of their benefits, or

b. all of their benefits in relation to one or more of the benefit categories.

8. A transfer of safeguarded benefits will be subject to the requirement that the member obtain appropriate independent advice except in limited circumstances. This requirement applies where a member wishes to transfer to a different scheme or to a different section of the same scheme to acquire flexible benefits.

The role of the trustee

9. The new pension flexibilities will have the potential to increase the number of requests trustees receive from members for information about the value of their benefits and the number of transfer applications. An increase in the volume of transfers could also have an impact on both the funding and investment policy of DB schemes.

10. Trustees should ensure they have processes in place to implement transfer requests in a timely manner. They should maintain accurate and complete records of all requests received and the transfers that have been made. This should also enable trustees to apply to us for an extension to make the transfer if needed.

11. It is not the trustee’s role to second-guess the member’s individual circumstances and choice to transfer safeguarded benefits. Nor is it their role to prevent a member from making decisions which the trustees might consider to be inappropriate to the member’s circumstances.

12. Trustees can support members in a number of ways to ensure they have the information they need to make a fully informed decision, including by:

a. providing information on finding Financial Conduct Authority (FCA) authorised advisers

b. making them aware that the advice they obtain will be informed by their personal circumstances, and

c. informing them that advice should explain benefits being given up when compared to any future options.
13. Similarly, the member’s adviser is likely to seek information from the scheme relevant to a potential transfer and the trustees should comply with all reasonable requests for this information.

14. As an integral part of scheme management, it will be important for trustees to monitor and understand demand from members for transfers and the subsequent impact those transfers could have on scheme funding, including the effect of a transfer of those members with a large transfer value relative to the scheme.

15. It will also be important to monitor the potential impact on investments, particularly regarding the liquidity required to pay large numbers of individual transfers or in respect of members with a large transfer value relative to the scheme.

Transfer requests

16. Members with safeguarded benefits have a statutory right to a request a transfer once in every 12 month period. Schemes may allow more frequent requests. Where a member requests a transfer there are a number of steps in the process that must be followed. Upon the receipt of a member’s request for a transfer value the following steps are necessary:

a. The trustees must ensure within one month that a member has been notified of the requirement to take independent advice

b. The trustees must respond with a statement of entitlement within three months of the date of the member’s application. This statement should include a formal quotation of the member’s transfer value at the guarantee date (a date which must be within the same three month period)

c. The trustees must give the member the statement of entitlement within 10 working days of the guarantee date. By default, this statement must provide details of all benefits the member holds. It must also provide a further member notice that they will be required to provide the scheme evidence that they have received independent advice before a transfer of benefits can be arranged

d. To obtain the transfer value, the member must make a further application in writing and within three months from the guarantee date confirming that they wish to transfer and provide the trustee with confirmation that they have obtained independent advice from an FCA authorised adviser which includes the relevant details enabling the trustees to check this.
e. The receiving pension scheme has to be willing to accept the transfer

f. The trustees must check that the member has received financial advice from an adviser authorised by the FCA on the transfer

g. The trustees must then transfer the guaranteed transfer value within six months of the guarantee date – this six month time limit applies only where the trustees have been able to check that the member has obtained independent advice about the transfer.

17. Where a member’s safeguarded benefits contain contracted-out rights the trustees should also make sure that they comply with the requirements of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (the ‘contracting-out regulations’). This includes obtaining additional written acknowledgements from the member regarding their contracted-out rights before they complete the transfer.

The requirement to take appropriate independent advice

18. There is a general requirement for members with safeguarded benefits wishing to acquire flexible benefits that they obtain appropriate independent advice before making a transfer application. This requirement applies to transfers made under the cash equivalent legislation as well as transfers made under a scheme’s rules. Members will be expected to meet the cost of the advice, except where the transfer is employer-instigated.

19. In respect of all requests for a transfer of safeguarded to flexible benefits received on or after 6 April 2015, trustees must, unless the exemption described in the paragraph below applies, check that the member has taken appropriate independent advice from an FCA authorised adviser on the merits of the transfer.

20. Where the member’s initial cash equivalent value of his or her safeguarded benefits in the scheme is less than £30,000, the member is not required to obtain advice for the purposes of making a transfer.

21. The Government has extended the FCA’s remit to cover advice on transfers of safeguarded benefits. It is the responsibility of the financial adviser to comply with FCA rules.

2 The requirement to obtain financial advice falls on a member who has applied for the statement of entitlement post 5 April 2015. For conversions under scheme rules, the member and the trustee are to have agreed to the conversion post 5 April.

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5 Advising on conversion or transfer of pension benefits.
22. Requiring members to obtain appropriate independent advice does not make trustees responsible for checking what advice was given, what recommendation was made or to confirm whether the member is following that recommendation. The adviser is required to provide the member with a confirmation in writing which the member is to submit to trustees to enable them to check that appropriate independent advice has been obtained by the member.

23. Trustees must not transfer benefits until they have received from the member a written request to transfer and checked that appropriate independent advice has been obtained from an FCA authorised adviser. Trustees must ensure the member has provided the scheme with a signed confirmation from their adviser. The adviser’s confirmation must include the following statements:

a. that they have permission to carry out the regulated activity in article 53E of the FCA’s regulated activities order to provide advice on the transfer of safeguarded benefits

b. the advice has been given on the transfer of safeguarded benefits to flexible benefits

c. the name of the member that was given the advice and the scheme in which they hold safeguarded benefits

d. the adviser’s FCA registration number.

24. Trustees should keep these details. A copy of the advice and recommendation provided to the member need not be obtained.

25. A check must be made by the trustees on the adviser’s details on the Financial Services Register maintained by the FCA before the transfer is made. It may also be sensible for the scheme to conduct periodic additional checks, for example through further communication with the adviser directly. Where there are concerns about the adviser, these should be reported to the FCA.

26. The member should be contacted as soon as possible in the event of a problem corroborating information on the Financial Services Register. The member should be informed that the transfer will not proceed until they have provided the correct information. The member should be made aware that their transfer will be at risk if confirmation is not received within three months of the guarantee date. Trustees should keep a record of the checks undertaken.
Transfer value assumptions and scheme funding

27. The statutory basis and approach for calculation of cash equivalent transfer values is unchanged. Broadly speaking the requirement is to establish a process for establishing a transfer value based on assumptions that are no weaker than at the ‘best estimate’ level. Transfer values may, in certain cases, be reduced below this level. Details of these requirements are contained in the legislation and this is supplemented by our transfer values guidance.

28. Trustees should consider the impact on their DB scheme’s funding that the number and size of transfer requests could have. Scheme funding and transfer value assumptions are related and, as such, decisions on each should not be taken in isolation. Consistent with Code of practice 3: funding defined benefits, trustees should be considering the risks presented by transfers to the likelihood of members receiving their benefits.

29. Trustees are expected to adopt a proportionate and integrated approach to the overall management of scheme funding risks, taking into account their view of the strength of the employer’s covenant. They should consider whether there could be a material risk to their funding assumptions as a result of their approach to transfers. An integrated approach to management of these risks will inform whether further action is needed by the trustees. For example, it may be necessary to understand how current and future age profiles, likely member demand and size of transfers could impact on expected investment returns, liquidity and views on the strength of the employer’s covenant.

30. Trustees should identify any potential for different classes of transferring members disproportionately affecting scheme funding. Care with transfer bases will be especially important for smaller schemes where the departure of a few members with very large transfer values relative to the total scheme assets could have disproportionate impact on the funding of the scheme.

31. Where the scheme is underfunded trustees may also request an insufficiency report (available where the scheme needed a recovery plan at the last valuation). In some situations reducing transfer values for underfunding may be appropriate. In all cases trustees should balance their responsibilities to transferring members with those remaining in the scheme. Achieving such balance will not be a precise science and trustees should obtain advice from their actuary. Our transfer value guidance sets out the considerations needed to reach a balanced view.

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6 www.tpr.gov.uk/guidance-transfer-values
7 www.tpr.gov.uk/code3
8 See paragraphs 36-56 at www.tpr.gov.uk/codes/code-funding-defined-benefits.aspx#s15001
9 www.tpr.gov.uk/guidance-transfer-values
32. Further guidance is also available in respect of transfer exercises initiated by an employer where an employer may be seeking to actively reduce the risks or costs associated with the DB scheme by offering members the option to transfer. Our published statement outlines factors trustees should consider when they are aware the employer has made this type of proposal\(^\text{10}\). We support the current industry code of practice\(^\text{11}\) on incentive exercises for pensions.

33. Transfer bases can be changed at any time, informed by funding position and experience. Trustees should therefore discuss with their advisers options to respond to material changes (either positive or negative) to the scheme’s overall position and any consequential impact on the management of the scheme, for example the need for changes to investment strategy.

**Due diligence on the receiving scheme**

34. We expect trustees to conduct proper due diligence on the receiving scheme to ensure that it is a legitimate arrangement.

35. Where trustees have reason to believe that the receiving scheme is not a legitimate arrangement, they should consider carefully whether the transfer should be made. Trustees should refer to our guidance on pension scams, which includes a checklist of the common indicators of a pension scam and outlines ways for trustees to make further enquiries, contacting the member and reporting to authorities\(^\text{12}\).

**Communications**

36. Members may be unaware of whether they have safeguarded or flexible benefits (or both) in their scheme and the associated requirement to take advice\(^\text{13}\). Communications (such as the scheme booklet) should be reviewed and updated to explain the impact of new pension flexibilities.

37. Where a statement of entitlement is given to a member as a result of a transfer request, the member must be provided with information including a statement to explain whether the member’s transfer value has been reduced and, if so:

   a. the amount by which it has been reduced

   b. the reasons for the reduction

   c. an estimate of any date by which it may be possible to provide an unreduced transfer value.

38. The trustees should beware of implying that the transfer value offers ‘full’ value for a member’s safeguarded benefits.
39. It is also important for the member to be made aware of the time limits applicable to making a transfer application so that, for example, they do not find their pension coming into payment because of delay.

40. Members considering a transfer should be made aware of the trustees’ requirement to check that the member has received professional advice and the documentation that will be requested by the trustees from the member to evidence that this advice has been obtained.

41. Trustees are encouraged to ensure that members receive clear information about the risk of pension scams. The statement of entitlement provides an additional opportunity to make members aware of what to watch out for.

**Applying to us for more time to complete a transfer request**

42. We are not able to waive a trustee’s legal duty to carry out a transfer within the statutory deadline and expect that the majority of transfer requests will be completed within the statutory deadline. Where trustees have carried out a check to determine whether the member has obtained appropriate independent advice but the check could not confirm this, or the trustees have been unable to perform the check due to factors outside their control, they do not have to proceed with the transfer request.

43. Trustees can submit a request to us to extend the six month payment period during which they must make payment of a transfer.\(^{14}\). However, there are limited circumstances in which we may grant an extension of this time period. Any application for an extension must be made within this six month period. It should indicate the additional time required to effect the transfer and the reasons why the transfer cannot be completed on time.

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\(^{14}\) Reg 13 (a) Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847).
44. The circumstances where a time extension may be granted are:
   a. if the scheme is being wound up or about to be wound up
   b. the interests of members generally would be prejudiced by the transfer
   c. the member has not taken all steps they need to take for the trustees to carry out the transfer
   d. the trustees have not been provided with the information they reasonably require to carry out the transfer
   e. there is a dispute between the scheme and member over the transfer value, and
   f. the scheme is ceasing to be contracted out.

45. Any application should identify one or more of these grounds as the basis for the request for a time extension and include supporting evidence. For example, the trustees may wish to demonstrate the need for more time in order to preserve asset values before they are liquidated or, as part of due diligence, they may be awaiting confirmation from HMRC that the receiving scheme is registered with them.

46. In the event an application is made, trustees should continue to progress a member’s request. If the transfer is successfully completed whilst the extension application is being dealt with by us, this may remove the need for us to proceed with it.

47. Approval of applications is one of our reserved regulatory functions exercised by the Determinations Panel. Further advice on our approach to applications is available at www.tpr.gov.uk/dp-procedures.

Our role

48. Trustees are expected to identify and address key risks in administration and, as a risk based regulator, we are focused on education and enablement to help trustees comply with their legal requirements.

49. Where transferring trustees can provide evidence of concerns, for example where member funds may be at risk of a pension scam, then this would be a factor we would consider when deciding whether to take action in respect of non-payment of a transfer value.

50. In the event of poor scheme governance and non-compliance with legal requirements, we may consider further engagement with the trustees to understand how they intend to make improvements and whether it would be appropriate to consider the use of our powers.