

Joint statement by The Pensions Regulator
and the Financial Services Authority

Enhanced transfer value exercises

Some financial advisory firms are currently involved in giving pensions transfer advice to members of defined benefit (DB) occupational pension schemes as part of an enhanced transfer value or incentive to transfer exercise.

In transfer exercises, the sponsoring employers of such schemes offer members the chance to transfer their benefits out to another scheme and will usually pay an enhancement or incentive to encourage them to do so. Pension transfer is a complex area and can be difficult for the member to understand. The risks of an unsuitable outcome may be increased by the fact that these exercises are unsolicited.

The Financial Services Authority (FSA) has concerns about:

- the quality of advice being given to members and whether it reflects the starting assumption that a transfer will not be suitable
- whether firms are identifying and managing conflicts of interests that arise with this type of business

and reminds firms of their obligations under the client's best interests and pension transfer rules.

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When a firm advises a scheme member to transfer their pension benefits to another scheme, it must take reasonable steps to ensure that the personal recommendation is suitable for that member in light of their personal and financial circumstances. This means that the firm must obtain from the member such information as is necessary for the firm to understand the essential facts about them. For example, automatically recommending a transfer on the basis that the critical yield has been achieved without any further investigation as to the member's personal and financial circumstances would not meet the FSA's requirement to assess suitability. If the firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the member.

The Pensions Regulator ('the regulator') and the FSA would like to remind advisers that conflicts of interest may arise if they have links to the sponsoring employer's advisers or are remunerated by the sponsoring employer. Conflicts of interest may also arise on trustee boards where trustees hold an active role within the sponsoring employer. The employer's interests and those of the scheme members may not coincide. Advisers who undertake such transfer exercises must identify and manage conflicts of interest. Remuneration structures which are put in place should not link payment levels to the number of transfers recommended or levels of employer liability removed where this would breach the rule on inducements. Whilst the members' advisers may be appointed by the employer, they should be separate from those advising the employer on the exercise.

The regulator is aware that employers are making the enhanced transfer offers to members. As stated in December 2009, the regulator believes that trustees should start from the presumption that these exercises are not in the members' interest. The regulator has today published revised guidance on transfer incentives for consultation which also applies to other forms of incentive exercises. The draft guidance contains principles that the regulator expects any exercise should adhere to, and would expect the same standards to apply whether it is an advisory firm or employer making the offer, and regardless of the types of schemes that are within the proposal. The regulator will investigate any behaviour that is outside the spirit of these principles.

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Employers making enhanced transfer offers to their scheme members, and so having a financial interest in the outcome, should ensure that any communications are clear, fair and not misleading. Offers should be constructed in an open and transparent manner, and in full consultation with the scheme trustees. Any offer should include the provision to scheme members of independent and impartial financial advice.

Whilst this statement is primarily aimed at advisers and sponsoring employers, we would remind provider firms that they also have responsibility for the fair treatment of customers and need to be aware of, and manage, conflicts of interest. The FSA's factsheet on '**Pension transfers – who can do what and when**' contains further information in this regard. The regulator and the FSA are actively engaging with both providers and advisers who operate in this marketplace to assess the risks to our objectives and will take action where necessary.

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