

## Chapter 19

# Pensions supplementary provisions

## 19.1B Ban on contingent charging for pension transfers and conversions

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf>]

### Application

19.1B.1 **R**

This section applies to a *firm* in relation to the provision of:

- (1) *advice on conversion or transfer of pension benefits* except where:
  - (a) the only *safeguarded benefit* involved is a *guaranteed annuity rate*; or
  - (b) it is *abridged advice*;
- (2) *investment advice* or other services in connection with a *pension transfer* or *pension conversion* (including, but not limited to, implementing and arranging a *pension transfer* or *pension conversion*);
- (3) ongoing advice or other services in relation to rights or interests in a *non-DB pension scheme* derived in whole or part from a *pension transfer* or *pension conversion*; or
- (4) any related services.

### Purpose

19.1B.2 **G**

The purpose of this section is to ensure that *firms'* charging structures, either individually or taken together with other *associates*, do not create any potential for a conflict of interest relating to, or an incentive to recommend or effect, a *pension transfer* or a *pension conversion* to a *retail client*.

### Ban on contingent charging

19.1B.3 **R**

Except as specified in **■** COBS 19.1B.9(1) or **■** (2), a *firm* must ensure that both the methodology for calculating any part of, and the total value of, the *firm's adviser charges, employer or trustee funded pension advice charge* or *remuneration* do not vary depending on whether or not:

- (1) the *firm* makes a *personal recommendation* to a *retail client* to effect a *pension transfer* or a *pension conversion*; and/or

- (2) the *retail client* effects a *pension transfer* or a *pension conversion*; and/or
- (3) (in relation to ongoing advice or other services in relation to the *retail client's* rights or interests in a *non-DB pension scheme*) the rights or interests in the *non-DB pension scheme* include sums derived from a *pension transfer* or a *pension conversion*.

19.1B.4 **R** Where:

- (1) one *firm* carries out multiple services for a particular *retail client*; and/or
- (2) a *firm* and one or more *firms* that are its *associates* (including any other *firm* providing *investment advice* in relation to a *proposed arrangement*) are involved then,
  - COBS 19.1B.3R applies to the *firm* in relation to both the methodology for calculating any part of, and the total value of, the *adviser charges*, *employer or trustee funded pension advice charge* and/or *remuneration* of the *firm* and, where applicable, any of those *associates*.

- 19.1B.5 **R**
  - (1) A *firm* must not allow itself to be part of any charging structure or arrangement (operated by the *firm* or any *associate*) which could create a potential incentive to any *firm* or any *firm* that is its *associate* to recommend or arrange a *pension transfer* or a *pension conversion* to or for a *retail client* or otherwise could circumvent the *rules* in this section.
  - (2) This includes charging structures in relation to the pricing of other goods or services provided to the *client* or a connected *person* at any time by any *firm* involved in the *pension transfer* or *pension conversion* arrangements, or by any *associate* of the *firm*.

**Examples of unacceptable practices**

- 19.1B.6 **G** The following *evidential provisions* provide examples of charging arrangements the *FCA* considers will breach the *rules* in this section.

- 19.1B.7 **E**
  - (1) A *firm* should not charge and/or receive *adviser charges*, *employer or trustee funded pension advice charges* and/or *remuneration*, that are higher, when taken together, if the recommendation is to effect a transfer or conversion than if the recommendation is not to do so.
  - (2) A *firm* and/or any of its *associates* that are *firms* should not charge and/or receive *remuneration* of a higher amount for their ongoing advice or services in relation to the funds in a *non-DB pension scheme* than they charge or receive where the funds are not derived from a *pension transfer* or a *pension conversion*.
  - (3) A *firm* should not purport to charge a *retail client* the same for advice that recommends a *pension transfer* or a *pension conversion* as it would for advice that does not recommend a transfer or conversion, but not take reasonable steps to enforce payment of the full amount

of the charge by the *retail client* where the advice is not to transfer or convert.

- (4) A *firm* should not charge a lower amount for any other services provided, or to be provided, by the *firm* or an *associate* to the *retail client* or, anyone connected to the *retail client*, if the *client* is advised not to transfer or convert.
- (5) A *firm* should not subsequently vary its *adviser charges*, *employer or trustee funded pension advice charge* and/or *remuneration* for advice and/or *related services* so that in practice they become dependent on the outcome of a *personal recommendation* or whether the *retail client* effects a *pension transfer* or a *pension conversion*.
- (6) A *firm* should not charge less in relation to *full pension transfer or conversion advice* (including charges for *abridged advice*) than it would do if it provided *investment advice* on the investment of the same size of pension funds but which did not include funds from a *pension transfer* or a *pension conversion*. This does not apply in relation to *full pension transfer or conversion advice* where part of the charge is payable by an *employer or trustee funded advice charge*.
- (7) A *firm* should not undertake some services related to *full pension transfer or conversion advice*, such as parts of *appropriate pension transfer analysis* or *transfer value comparator*, then decline to advise further and not charge for the work undertaken.
- (8) Contravention of:
  - (a) either of (1) or (2) may be relied upon as tending to establish contravention of ■ COBS 19.1B.3R; and
  - (b) any of (3) to (7) may be relied upon as tending to establish contravention of ■ COBS 19.1B.5R.

### Guidance about charging for full pension transfer or conversion advice

19.1B.8

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- (1) A *firm* may provide *full pension transfer or conversion advice* to a *retail client* free of charge in exceptional cases, even if they do not fall within the exceptions in ■ COBS 19.1B.9R(1) or ■ (2). This may be, for example, where the *firm* is acting entirely pro-bono on humanitarian grounds, or is helping a close family friend, where the *firm* can demonstrate that the *rules* on contingent charging in this chapter are not being breached. For example, where all of the related services provided (by the *firm* or any *associate*) are also free of charge. The *firm* will also need to show that the advice was free of charge irrespective of whether or not the advice results in a recommendation to transfer or convert.
- (2) Where a *firm* has provided a *retail client* with *abridged advice* and with *full pension transfer or conversion advice*, it should charge the *retail client* taking into account the guidance in ■ COBS 19.1A.12G(2).

**Exceptions to the ban on contingent charging**

- 19.1B.9** **R** A firm need not comply with ■ COBS 19.1B.3R or ■ COBS 19.1B.5R in relation to *full pension transfer or conversion advice* if it has satisfied itself, on reasonable grounds and based on adequate supporting evidence, that the *retail client* is unable to pay for *full pension transfer or conversion advice* without using funds that are not reasonably available, and is either:
- (1) suffering from *serious ill-health*; or
  - (2) (a) experiencing *serious financial difficulty* or likely would be if they had to pay for *full pension transfer or conversion advice* on a non-contingent basis; and  
(b) would be able to access their pension fund immediately after a *pension transfer* or a *pension conversion* has taken effect.
- 19.1B.10** **R** A firm that charges a *retail client* in relation to *full pension transfer or conversion advice* on a contingent basis in reliance on ■ COBS 19.1B.9R(1) or ■ (2), must ensure that the methodology for calculating, and the total value of, the *firm's* and any *associate's adviser charges, employer or trustee funded pension advice charge or remuneration* for that advice, any related service, and any ongoing advice or other services in relation to the *retail client's* rights or interests in a *non-DB pension scheme*, is not higher than if they had charged the *retail client* in relation to *full pension transfer or conversion advice* on a non-contingent basis.
- 19.1B.11** **G** A *client* is likely to meet the requirements for *serious ill-health* where:
- (1) the *retail client* has a particular medical condition, as shown by reliable medical reports or records; and
  - (2) there are reputable sources of medical information to evidence that the medical condition in question results, in the majority of cases, in a life expectancy below age 75.
- 19.1B.12** **G** A *client* is likely to meet the requirement that they are unable to pay for *full pension transfer or conversion advice* without using funds that are not reasonably available where the amount of their reasonably available savings and investments is below the cost of *full pension transfer or conversion advice*.
- 19.1B.13** **G** The types of circumstances in which a *client* is likely to be able to show they are experiencing *serious financial difficulty* include where continuing to pay domestic bills and credit commitments is a heavy burden on the *client* and the *client* has missed payments for any credit commitments and/or any domestic bills in any three or more of the last six *calendar months*.

**Examples of unacceptable reasons for relying on an exception to the ban on contingent charging**

- 19.1B.14** **G** The following *evidential provisions* provide examples of what the FCA considers to be unacceptable reasons for relying on the *serious financial*

*difficulty* and *serious ill health* exceptions and which, if relied on by a *firm*, the *FCA* considers will breach the *rules* in this section.

- 19.1B.15** **E**
- (1) A *firm* should not be satisfied that a *client* meets the requirements for *serious ill-health* where a *client* is only able to demonstrate an expected reduced life expectancy due to lifestyle factors (for example smoking or drinking alcohol) and not a medical condition.
  - (2) A *firm* should not be satisfied that a *client* meets the requirements for *serious financial difficulty* where a *client* is experiencing *serious financial difficulties* because of incurring non-essential expenditure.
  - (3) A *firm* should not be satisfied that a *client* will be able to access their pension fund immediately after a *pension transfer* or *pension conversion* (relevant to *serious financial difficulty*) unless the *client* has been able to demonstrate to the satisfaction of the *firm* the basis on which they would be able to access their pension fund immediately after a *pension transfer* or *pension conversion*.
  - (4) A *firm* should not be satisfied that a *client* is unable to pay for *full pension transfer or conversion advice* where a *client* is able to access reasonably available savings or investments to pay for *full pension transfer or conversion advice* but does not wish to access these to pay for advice.

- 19.1B.16** **R** Contravention of any of **■ COBS 19.1B.15E (1) to ■ (4)** may be relied upon as tending to establish contravention of **■ COBS 19.1B.9R** and therefore **■ COBS 19.1B.3R** or **■ COBS 19.1B.5R**.

#### **Additional record-keeping requirements for a firm relying on an exception in COBS 19.1B.9R(1) or (2)**

- 19.1B.17** **R** In addition to any other record-keeping requirements to which the *firm* is subject, a *firm* charging a *retail client* on a contingent basis in reliance on one of the exceptions in **■ COBS 19.1B.9R(1)** or **■ (2)** must make and retain indefinitely a record of the evidence it relied upon to satisfy itself that all the relevant requirements in **■ COBS 19.1B.9R** were met in relation to the *retail client*.