

## Chapter 19

# Pensions supplementary provisions

## 19.1 Pension transfers, conversions, and opt-outs

[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

19.1.-1 **R** [deleted]

19.1.-1A **R** Except where a *firm* is providing *abridged advice* (see ■ COBS 19.1A), this section applies to a *firm* which:

- (1) gives *advice on pension transfers, pension conversions and pension opt-outs* to a *retail client*; or
- (2) *arranges pension transfers, pension conversions or pension opt-outs*,

in relation to:

- (3) a *pension transfer*;
- (4) a *pension conversion*; or
- (5) a *pension opt-out* from a scheme with *safeguarded benefits* or *potential safeguarded benefits*.

19.1.-1B **G** A *firm* should comply with this section in order to give appropriate independent advice for the purposes of section 48 of the Pension Schemes Act 2015.

19.1.1-A **R** [deleted]

19.1.1 **R** [deleted]

### Requirement for pension transfer specialist

19.1.1A **R**

- (1) A *firm* must ensure that *advice on pension transfers, pension conversions and pension opt-outs* is given or checked by a *pension transfer specialist*.
- (2) The requirement in (1) does not apply where the only *safeguarded benefit* involved is a *guaranteed annuity rate*.

**Role of the pension transfer specialist when checking**

**19.1.1B** **G** When a *firm* uses a *pension transfer specialist* to check its proposed advice on pension transfers, pension conversions and pension opt-outs, it should ensure that the *pension transfer specialist* takes the following steps:

- (1) checks the entirety and completeness of the advice;
- (2) confirms that any *personal recommendation* is suitable for the *retail client* in accordance with the obligations in ■ COBS 9.2.1R to ■ 9.2.3R and including those matters set out at ■ COBS 19.1.6G; and
- (3) confirms in writing that they agree with the proposed advice before it is provided to the *retail client*, including any *personal recommendation*.

**Personal recommendation for pension transfers and conversions**

**19.1.1C** **R**

- (1) A *firm* must make a *personal recommendation* when it provides advice on conversion or transfer of pension benefits.
- (2) Before making the *personal recommendation* the *firm* must:
  - (a) determine the *proposed arrangement with flexible benefits* to which the *retail client* would move; and
  - (b) carry out the *appropriate pension transfer analysis* and produce the *transfer value comparator*.
- (3) The requirement in (2)(b) does not apply if the only *safeguarded benefit* involved is a *guaranteed annuity rate*.
- (4) The *firm* must take reasonable steps to ensure that the *retail client* understands how the key outcomes from the *appropriate pension transfer analysis* and the *transfer value comparator* contribute towards the *personal recommendation*.
- (5) Prior to making a *personal recommendation* to effect a *pension transfer* or *pension conversion*, a *firm* must obtain evidence that the *client* can demonstrate that they understand the risks to them of proceeding with the *pension transfer* or *pension conversion*.

**19.1.1D** **G**

- (1) ■ COBS 9 contains suitability requirements which apply if a *firm* makes a *personal recommendation* in relation to advice on conversion or transfer of pension benefits.
- (2) (a) ■ COBS 9 requires a *firm* to obtain from the *client* necessary information for the *firm* to be able to make a recommendation. The necessary information includes ensuring that the *client* has the necessary experience and knowledge to understand the risks involved in the transaction. If a *client* does not understand the risks and/or the *firm* does not have evidence that the *client* can demonstrate their understanding, then it is likely not to be appropriate, under the ■ COBS 9 requirements, to make a recommendation to transfer or convert.

(b) The *firm* should make a clear record of the steps it has taken to satisfy itself on reasonable grounds that it has adequate evidence of the *client's* demonstration of their understanding of the risks.

(3) When a *firm* is obtaining evidence as to whether the *client* can demonstrate that they understand the risks involved in the *pension transfer* or *pension conversion*, it should tailor its approach according to the experience, financial sophistication and/or vulnerability of each individual *client*.

### Appropriate pension transfer analysis

19.1.2 **R** [deleted]

19.1.2A **R** [deleted]

19.1.2B **R** To prepare an appropriate transfer analysis a *firm* must:

- (1) assess the benefits likely to be paid and options available under the *ceding arrangement*;
- (2) compare (1) with those benefits and options available under the *proposed arrangement*;
- (3) where the *proposed arrangement* is a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*, and a *qualifying scheme* is available to the *retail client*, compare the benefits and options available under the *proposed arrangement* with the benefits and options available under the *default arrangement* of the *qualifying scheme*; and
- (4) undertake the analysis in (1), (2) and (3) in accordance with **■ COBS 19 Annex 4A** and **■ COBS 19 Annex 4C**.

19.1.2C **R** **■ COBS 19.1.1-AR** and **■ COBS 19.1.2BR** do not preclude a *firm* from preparing other forms of the analysis (for example, stochastic cashflow modelling) which are relevant to making a *personal recommendation* to the *retail client*, as long as projected outcomes at the 50th percentile are no less conservative than if the analysis had been prepared in accordance with **■ COBS 19 Annex 4A** and **■ COBS 19 Annex 4C**.

19.1.2D **G**

- (1) This *guidance* applies if a *firm* presents information in the *appropriate pension transfer analysis* which considers the impact of:
  - (a) the Pension Protection Fund and the *FSCS*; or
  - scheme funding or employer covenants.
- (2) If a *firm* presents the information in (1) it should, in accordance with *Principle 7* and the *fair, clear and not misleading rule*, do so in a way that is balanced and objective.

(3) If a *firm* does not have specialist knowledge in assessing the impact of (1)(a) or 1(b), it should consider not including the information.

19.1.2E **G**

- (1) This *guidance* applies if a *firm* presents information in the *appropriate pension transfer analysis*:
- (a) that contains an indication of future performance; and
  - (b) is produced by a financial planning tool or cash flow model that uses different assumptions to those shown in the *key features illustration* for the *proposed arrangement*.
- (2) A *firm* presenting the information in (1) should explain to the *retail client* why different assumptions produce different illustrative financial outcomes.

19.1.3 **G**

[deleted]

### Transfer value comparator

19.1.3A **R**

- (1) To prepare a *transfer value comparator*, a *firm* must compare the transfer value offered by the *ceding arrangement* with the estimated value needed today to purchase the *future income benefits* available under the *ceding arrangement* using a *pension annuity* (calculated in accordance with ■ COBS 19 Annex 4B and ■ COBS 19 Annex 4C).
- (2) The *firm* must provide the *transfer value comparator* to the *retail client* in a durable medium using the format and wording in ■ COBS 19 Annex 5 and using the notes set out in ■ COBS 19 Annex 5 1.2R.
- (3) When the *retail client* has passed the normal retirement age of the *ceding arrangement*, the *firm* must provide a *transfer value comparator* applying the retirement age assumed in the calculation of the transfer value.
- (4) Where the *ceding arrangement* allows the *retail client* to take their benefits at an age below the scheme's normal retirement age, with no reduction for early payment and where no consent is required, then the *firm* must provide a *transfer value comparator* assuming that the *retail client* will retire at this age.

### Guidance on estimated transfer value

19.1.3B **G**

If a *firm* gives *advice on conversion or transfer of pension benefits* to a *retail client* under circumstances where the *ceding arrangement* is expected to be changed, or replaced by another scheme, the *firm* should:

- (1) prepare a provisional *appropriate pension transfer analysis* and *transfer value comparator* based on the information related to the changed or replacement scheme;
- (2) make reasonable assumptions about the changed or replacement scheme where the benefits are uncertain; and

- (3) set out in a provisional *suitability report* any assumptions and uncertainties to the *retail client*, which should clearly set out that the *personal recommendation* can only be finalised once the transfer value and changed or replacement arrangements are certain.

19.1.4 **R** [deleted]

19.1.4A **E** [deleted]

19.1.4B **R** [deleted]

19.1.5 **R** [deleted]

### Guidance on assessing suitability

- 19.1.6 **G**
- (1) The *guidance* in this section relates to the obligations to assess suitability in ■ COBS 9.2.1R to ■ 9.2.3R.
  - (2) When a *firm* is making a *personal recommendation* for a *retail client* who is, or is eligible to be, a member of a *pension scheme* with *safeguarded benefits* and who is considering whether to transfer, convert or opt-out, a *firm* should start by assuming that a transfer, conversion or opt-out will not be suitable.
  - (3) A *firm* should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the *retail client's* best interests.
  - (4) To demonstrate (3), the factors a *firm* should take into account include:
    - (a) the *retail client's* intentions for accessing pension benefits;
    - (b) the *retail client's* attitude to, and understanding of the risk of giving up *safeguarded benefits* (or potential *safeguarded benefits*) for *flexible benefits*, taking into account the following factors:
      - (i) the risks and benefits of staying in the ceding arrangement;
      - (ii) the risks and benefits of transferring into an arrangement with *flexible benefits*;
      - (iii) the *retail client's* attitude to certainty of income in retirement;
      - (iv) whether the *retail client* would be likely to access funds in an arrangement with *flexible benefits* in an unplanned way;
      - (v) the likely impact of (iv) on the sustainability of the funds over time;
      - (vi) the *retail client's* attitude to and experience of managing investments or paying for *advice on investments* so long as the funds last; and

- (vii) the *retail client's* attitude to any restrictions on their ability to access funds in the *ceding arrangement*;
  - (c) the *retail client's* attitude to, and understanding of investment risk;
  - (d) the *retail client's* realistic retirement income needs including:
    - (i) how they can be achieved;
    - (ii) the role played by *safeguarded benefits* (or potential *safeguarded benefits*) in achieving them; and
    - (iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and
  - (e) alternative ways to achieve the *retail client's* objectives instead of the transfer, conversion or opt-out.
- (5) If a *firm* uses a risk profiling tool or software to assess a *retail client's* attitude to the risk in (4)(b) it should:
- (a) check whether the tool or software is capable of taking into account at least those factors listed in (4)(b)(i) to (vii); and
  - (b) ensure that those factors which are not included are factored into the *firm's* assessment of the *client's* attitude to risk.
- (6) When a *firm* asks questions about a *retail client's* attitude to the risk in 4(b) it should consider the *rules* on communicating with *clients* (■ COBS 4), which require a *firm* to ensure that a communication is fair, clear and not misleading.
- (7) Where a *qualifying scheme* is available to the *retail client*, a *firm* considering making a *personal recommendation* to effect a *pension transfer* to a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*:
- (a) should start by assuming that it will not be as suitable as a transfer to the *default arrangement* of an available *qualifying scheme*; and
  - (b) will need to be able to demonstrate clearly that, as at the time of the *personal recommendation*, it is more suitable than a transfer to the *default arrangement* of an available *qualifying scheme*.
- (8) For the purposes of (7):
- (a) a *qualifying scheme* is available to the *retail client* where it accepts transfers from other schemes into its *default arrangement*; and
  - (b) where more than one *qualifying scheme* is available to the *retail client*, the *firm* should consider the available *qualifying scheme* that the *retail client* most recently joined, but may, in addition, also consider any of the other *qualifying schemes* available to the *retail client*.
- (9) To demonstrate (7)(b) the *firm* may, subject to (10), take into account one or more of the following considerations:
- (a) the *retail client* provides evidence of experience at making active investment choices as a self-investor or as an advised investor

(except in relation to investments in the *default arrangement* of a *qualifying scheme* or in a mortgage endowment policy or similar product);

- (b) where the *retail client* wishes to access the funds within 12 *months* of entering into pension decumulation and the *qualifying scheme* does not offer the *retail client* a decumulation option that would enable the *retail client* to achieve their desired outcome.
- (10) In taking into account the considerations in (9), as well as any other considerations that the *firm* may decide to take into account when demonstrating 7(b), the *firm* should also consider:
- (a) whether those considerations are so important to the *client* as to outweigh other considerations in favour of the *default arrangement* of the available *qualifying scheme*; and
  - (b) why the outcome sought by transferring to a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme* cannot be achieved by transferring to the *qualifying scheme*.
- (11) The presence of one or more of the following circumstances should not be taken as sufficient to demonstrate that the *personal recommendation* in (7) is suitable:
- (a) one of the *retail client's* objectives is to have access to a wider range of investment options than available under the *default arrangement* of the *qualifying scheme*;
  - (b) the transfer is to take place more than 12 *months* before the *retail client* enters into pension decumulation; and/or
  - (c) the *retail client* will enter into pension decumulation within the next 12 *months*, but the *retail client* has not yet decided whether or how they will access their funds.

### Working with another adviser

19.1.6A

G

- (1) This *guidance* relates to the obligations to assess suitability in ■ COBS 9.2.1R to ■ 9.2.3R.
- (2) Paragraphs (3) and (4) apply in the following situations:
  - (a) where two or more *firms* are involved in providing both *advice on pension transfers, pension conversions and pension opt-outs* and *advice on investments* in relation to the same transaction; and
  - (b) where two or more *employees* within the same *firm* are involved in providing both *advice on pension transfers, pension conversions and pension opt-outs* and *advice on investments* in relation to the same transaction.
- (3) In such situations, *firms* should work together (or ensure their *employees* work together) to:
  - (a) obtain information from the *retail client* under ■ COBS 9.2.2R(1) that is sufficient to inform both the *advice on pension transfers, pension conversions and pension opt-outs* and the *advice on investments*; and



(b) obtain information from the *retail client* under ■ COBS 9.2.2R(2) about the client's preferences regarding risk taking and their risk profile that covers both the risk in ■ COBS 19.1.6R(4)(b) and the risk in ■ COBS 19.1.6R(4)(c).

(4) In such situations, the *firm(s)* providing the *advice on investments* in relation to the proposed transaction should ensure that (where relevant) the advice takes into account the impact of any loss of *safeguarded benefits* (or potentially *safeguarded benefits*) on the *retail client's* ability to take on investment risk.

19.1.7 **G** [deleted]

19.1.7A **G** [deleted]

19.1.7B **G** [deleted]

#### Arranging without making a personal recommendation

19.1.7C **R** If a *firm* arranges a *pension transfer*, *pension conversion* or *pension opt-out* for a *retail client* without making a *personal recommendation* in relation to the *pension transfer*, *pension conversion* or *pension opt-out* it must:

(1) make a clear record of the fact that the *firm* has not given that *personal recommendation* to the *client*;

(1A) where the *pension transfer* or *pension conversion* is within the scope of the requirement in section 48 of the Pension Schemes Act 2015:

(a) not proceed with the arrangements until it has received confirmation, from the *firm* that gave the advice to the *retail client*, that the *retail client* has received a *personal recommendation* in accordance with the requirements of ■ COBS 19.1 (and that it was not *abridged advice*); and

(b) if the client has received a *personal recommendation*, ask whether or not the recommendation was to transfer or convert; and

(c) retain clear records showing evidence of (a) and (b);

(1B) where the recommendation in (1A) was not to transfer or convert the *retail client's* subsisting rights in respect of *safeguarded benefits*, the *firm* arranging the *pension transfer* or *pension conversion* must:

(a) warn the *retail client* that they are acting against advice not to transfer or convert;

(b) ask the *retail client* whether they understand the consequences of acting against advice;

(c) where the *retail client* does not understand the consequences of acting against advice, refuse to arrange the *pension transfer* or conversion and instead refer the *retail client* back to the *firm* that advised them not to transfer or convert for an explanation of that advice; and

- (d) retain a record of the communications with the *retail client* that evidence compliance with the requirements in (a) to (c);
- (2) retain the records in (1), (1A) and (1B) indefinitely.
- 19.1.7D** **G** Where the advice referred to in **COBS 19.1.7CR(1A)** was *abridged advice*, the *firm* being asked to arrange the transfer or conversion should not ask the advising *firm* for confirmation of the *abridged advice* given. The *firm* is not permitted to arrange the relevant *pension transfer* or *pension conversion* where the advice given was *abridged advice*.
- 19.1.7E** **R** Where the *firm* that has given advice to a *retail client* is asked by a *firm* arranging a *pension transfer* or *pension conversion* that is within the scope of the requirement in section 48 of the Pension Schemes Act 2015 to:
- (a) provide a confirmation that the *retail client* has received a *personal recommendation* in accordance with the requirements of **COBS 19.1** (and that it was not *abridged advice*); and
- (b) if the client has received a personal recommendation, confirm whether or not the recommendation was to transfer or convert,
- the advising *firm* must provide the requested information to the *firm* arranging a *pension transfer* or *pension conversion* as soon as reasonably practicable.
- Suitability reports**
- 19.1.8** **G** If a *firm* provides a *suitability report* to a *retail client* in accordance with **COBS 9.4.2AR** it should include:
- (1) a summary of the advantages and disadvantages of its *personal recommendation*;
- (2) an analysis of the financial implications (if the recommendation is to opt-out);
- (2A) a summary of the key outcomes from the *appropriate pension transfer analysis* (if the recommendation is to transfer or convert); and
- (3) a summary of any other material information.
- 19.1.9** **G** If a *firm* proposes to advise a *retail client* not to proceed with a *pension opt-out*, it should give that advice in writing.
- 19.1.9A** **R** Prior to finalising the *firm's personal recommendation*, a *firm* seeking evidence that the *client* can demonstrate their understanding of the risks in accordance with **COBS 19.1.1CR(5)** must:
- (1) make a clear record of either:
- (a) the evidence showing that the *client* demonstrated that they understood the risks involved in effecting a *pension transfer* or

*pension conversion* and the steps taken by the *firm* to obtain that; or

- (b) if the *firm* could not obtain evidence that the *client* could demonstrate that understanding and the *firm* did not change to a recommendation not to transfer, the steps taken by the *firm* to obtain the evidence and clear evidence and explanation of how the *firm* satisfied itself on reasonable grounds that it was still suitable to continue to make the same *personal recommendation*; and

- (2) retain the records in (1) indefinitely.

### The statutory advice requirement

19.1.10

G

- (1) Where a *firm* has advised a *retail client* in relation to a *pension transfer* or *pension conversion* and the *firm* is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the *firm* should provide such confirmation as soon as reasonably practicable.
- (2) The *firm* should provide the confirmation regardless of whether it advised the *client* to proceed with a *pension transfer* or *pension conversion* or not.

### Triage services

19.1.11

G

The table in ■ PERG 12 Annex 1G includes examples of when a *firm* is and is not *advising on conversion or transfer of pension benefits* when it has an initial "triage" conversation with a potential customer. The purpose of triage is to give the customer sufficient information about *safeguarded benefits* and *flexible benefits* to enable them to make a decision about whether to take *advice on conversion or transfer of pension benefits*.