

Chapter 19

Pensions supplementary provisions

		<div>19.1</div> <div>Pension transfers, conversions, and opt-outs</div>
		<p>[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]</p> <p>Application</p>
19.1.-1	R	[deleted]
19.1.-1A	R	<p>Except where a <i>firm</i> is providing <i>abridged advice</i> (see ■ COBS 19.1A), this section applies to a <i>firm</i> which:</p> <ul style="list-style-type: none">(1) gives <i>advice on pension transfers, pension conversions and pension opt-outs</i> to a <i>retail client</i>; or(2) <i>arranges pension transfers, pension conversions or pension opt-outs</i>, <p>in relation to:</p> <ul style="list-style-type: none">(3) a <i>pension transfer</i>;(4) a <i>pension conversion</i>; or(5) a <i>pension opt-out</i> from a scheme with <i>safeguarded benefits</i> or potential <i>safeguarded benefits</i>.
19.1.-1B	G	<p>A <i>firm</i> should comply with this section in order to give appropriate independent advice for the purposes of section 48 of the Pension Schemes Act 2015.</p>
19.1.1-A	R	[deleted]
19.1.1	R	[deleted]
		<p>Requirement for pension transfer specialist</p>
19.1.1A	R	<ul style="list-style-type: none">(1) A <i>firm</i> must ensure that <i>advice on pension transfers, pension conversions and pension opt-outs</i> is given or checked by a <i>pension transfer specialist</i>.(2) The requirement in (1) does not apply where the only <i>safeguarded benefit</i> involved is a <i>guaranteed annuity rate</i>.

Role of the pension transfer specialist when checking

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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

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- (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

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- (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 <i>firm</i> 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	<p>(1) This <i>guidance</i> applies if a <i>firm</i> presents information in the <i>appropriate pension transfer analysis</i>:</p> <ul style="list-style-type: none"> (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 <i>key features illustration</i> for the <i>proposed arrangement</i>. <p>(2) A <i>firm</i> presenting the information in (1) should explain to the <i>retail client</i> why different assumptions produce different illustrative financial outcomes.</p>
19.1.3	G	[deleted]
		Transfer value comparator
19.1.3A	R	<p>(1) To prepare a <i>transfer value comparator</i>, a <i>firm</i> must compare the transfer value offered by the <i>ceding arrangement</i> with the estimated value needed today to purchase the <i>future income benefits</i> available under the <i>ceding arrangement</i> using a <i>pension annuity</i> (calculated in accordance with ■ COBS 19 Annex 4B and ■ COBS 19 Annex 4C).</p> <p>(2) The <i>firm</i> must provide the <i>transfer value comparator</i> to the <i>retail client</i> 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.</p> <p>(3) When the <i>retail client</i> has passed the normal retirement age of the <i>ceding arrangement</i>, the <i>firm</i> must provide a <i>transfer value comparator</i> applying the retirement age assumed in the calculation of the transfer value.</p> <p>(4) Where the <i>ceding arrangement</i> allows the <i>retail client</i> 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 <i>firm</i> must provide a <i>transfer value comparator</i> assuming that the <i>retail client</i> will retire at this age.</p>
		Guidance on estimated transfer value
19.1.3B	G	<p>If a <i>firm</i> gives <i>advice on conversion or transfer of pension benefits</i> to a <i>retail client</i> under circumstances where the <i>ceding arrangement</i> is expected to be changed, or replaced by another scheme, the <i>firm</i> should:</p> <ul style="list-style-type: none"> (1) prepare a provisional <i>appropriate pension transfer analysis</i> and <i>transfer value comparator</i> 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

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(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

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

- 19.1.10

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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

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(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

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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*.