

Chapter 10

Guidance on activities related to pension schemes

10.4 Pension scheme service providers other than trustees

Q31. I provide administration services to pension schemes. Will I require authorisation or exemption?

Yes, if your services include any of the following activities and you cannot make use of an exclusion.

- (1) Receiving instructions from the trustees or members about the *buying or selling* of trust investments (being *securities or relevant investments*) and then instructing a broker or product provider to effect the transaction. This is because you are likely to be *arranging*. This will include arranging for investments such as units in a unit trust scheme or in a life policy managed fund to be realised or surrendered to raise cash.
- (2) Entering into investment transactions concerning *securities or relevant investments* on behalf of the trustees. This is because you will be *dealing in investments as agent*.
- (3) *Assisting in the administration and performance of contracts of insurance*. This will only be likely to apply if you handle claims under policies held by the scheme on behalf of the trustees or other policyholders. For example, if you were making a claim for benefits payable on the death of a member under the 'death in service' benefits provided by a pension scheme. To be carrying on this regulated activity you must be assisting the trustees in both the administration and performance. Whilst dealing with claims on the death of a scheme member is likely to involve assisting in the administration of the contract of insurance, it will only involve assisting in the performance if you assist the trustees, as policyholders, to satisfy a contractual obligation that they have under it. This will typically include assisting the trustees to notify the claim in the manner specified in the policy. Detailed guidance on this regulated activity is available in Chapter 5.7 of PERG.
- (4) Arranging the appointment of a custodian on behalf of the trustees. This is because you will be *arranging safeguarding and administration of assets*. But you will not be doing so simply because you instruct a fund manager to buy investments which the fund manager will then safeguard and administer in accordance with pre-existing arrangements.
- (5) Arranging for persons to join or to leave a *stakeholder pension scheme* or a *personal pension scheme* or to exercise certain rights under such a scheme. This is because the rights themselves will be a form of investment and so you will be *arranging*. This is explained in more detail in ■ PERG 12 (Q15 to Q20).
- (6) Acting as the scheme administrator (as defined in section 270(1) of the Finance Act 2004) for a stakeholder pension scheme or a personal pension scheme. This is because you are likely to be operating the scheme (see Q26).

- (7) Advising the trustees on the merits of buying or selling particular securities or relevant investments or advising a member on the merits of joining or leaving, or of exercising certain rights under, a stakeholder pension scheme or a personal pension scheme. This is because you will be *advising on investments* (see Q38 and Q39).
- (8) Advising a *member of a pension scheme* or their *survivor* on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out *safeguarded benefits* could amount to *advising on conversion or transfer of pension benefits* (see ■ PERG 2.7.16GG).

Services that typically will not involve any regulated activities include:

- maintaining records;
- liaising with tax authorities;
- arranging actuarial advice;
- paying over contributions to a product provider or fund manager for investment in line with pre-agreed instructions; and
- paying out benefits.

Q32. What are the exclusions that might apply to me as a pensions administration service provider?

One or more of the following exclusions might be available to you depending on the nature and scope of the services you provide:

- *dealing in investments as agent* and *arranging* with or through an *authorised person* (articles 22 and 29 of the *Regulated Activities Order*);
- *dealing in investments as agent, arranging* and *advising on investments* as a necessary part of providing other non-regulated services (article 67 of the *Regulated Activities Order*); and
- services provided to a member of your *group* (article 69 of the *Regulated Activities Order*).

But none of these exclusions will apply to you if, in carrying on the relevant *regulated activity*, you are an *investment firm* and do not benefit from any of the exemptions under *MiFID* (see Chapter 13 of *PERG*, including Q42).

Q33. How would the exclusions for dealing or arranging with or through an authorised person in articles 22 and 29 apply to me as a pensions administration service provider?

The exclusions will apply to you if:

- you are an *unauthorised person*;
- you are *dealing in investments as agent* or *arranging* on behalf of the pension scheme trustee or member (your 'client');
- the transaction into which you are entering or which you are arranging is either with an authorised product provider such as a unit trust manager or is effected by an authorised intermediary such as a stockbroker;
- you do not advise your client on the merits of his entering into the transaction;
- you are not paid by anyone other than your client; and
- the transaction does not involve *contracts of insurance*.

So, the exclusions can apply to a transaction involving any investment other than rights under a contract of insurance. Given that many pension schemes invest wholly or partly in contracts of insurance, there may be limited occasions where articles 22 or 29 will exclude all dealing or arranging activity of this kind.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person*

but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

Q34. When will regulated activities form a necessary part of my pension administration services so that I can use the exclusion in article 67?

Broadly speaking, a regulated activity will form a necessary part of your pension administration service if you could not reasonably expect to be able to provide your non-regulated administration services to the scheme trustee or member without conducting the regulated activity. This may apply where you are simply arranging for the payment of regular contributions that the broker or product provider will apply in line with standing instructions. This would, for example, apply to you if you were to be providing payroll services.

There are further conditions that must be met for the exclusion to apply:

- you must not be remunerated for the *regulated activity* separately from the remuneration you get from providing pension administration services; and
- you must not be a person who is required to be regulated by the *IDD*.

So, the exclusion cannot apply to you if you are providing a service that involves assisting in the conclusion or the administration and performance of *contracts of insurance*. But it may apply where you are providing other services relating to contracts of insurance (for example, arranging post-conclusion transactions such as surrenders or switches) or to other investments such as shares, unit trusts or contractual schemes.

Q35. I provide pension administration services to a corporate pension scheme trustee who is a member of the same group as me. Does this mean that the exclusion for services provided to other group members in article 69 will apply to me?

Yes, provided the services:

- may properly be regarded as being provided solely to the trustee (as will be the case where the trustee has delegated or outsourced the carrying out of regulated activities to you but remains responsible to the members for the performance of those activities) and not to the members; and
- do not relate to *contracts of insurance*.

If the services do relate to *contracts of insurance*, you are still unlikely to need authorisation because you will only be carrying out *insurance distribution activities* by way of business if you are remunerated for providing services to third parties. Members of your *group* are not considered to be third parties.

Q36. As an administration service provider, I have authority over the pension scheme trustees' bank account. Does this mean I have to be authorised?

No. Holding or controlling money belonging to a client is not, of itself, a regulated activity. It is only if you are holding or controlling the money in connection with performing a *regulated activity* that you will need to be *authorised*. This may arise, for example, if you are arranging investment transactions on behalf of the trustees and have authority to settle the transaction using funds in the trustees' bank account.

Q37. The trustees authorise me, as administration service provider, to determine how much money should be transferred for investment each month to ensure that the scheme has enough cash available to meet its obligations. Does this have regulatory implications for me?

No, unless it results in your concluding that there is a need to realise funds and instructing a broker or product provider to liquidate investments to do so. Should that happen, you are likely to be *dealing in investments as agent* or *arranging* subject to the possible availability of an exclusion such as that in article 29 of the *Regulated Activities Order* (see Q33). If you are able to exercise delegated powers to determine, on the trustees' behalf, which particular investments should be sold or surrendered, you are likely to be *managing investments* and need to be an *authorised or exempt person*.

Q38. My services to the pension trustees include advising them on investments and investment strategy. Is this likely to be regulated advice and mean that I must be authorised or exempt?

Yes, if the advice:

- relates to a particular *security or relevant investment* such as the ABC unit trust scheme or the XYZ unit-linked insurance policy - advice on investment strategy or the choice of fund managers or brokers is not regulated advice;
- is advice and not simply information - so, there must be a recommendation to *buy, sell* or hold on to the particular investments;
- relates to the merits (that is the pros or cons) of buying or selling the particular investment; and
- is given to a *person* who is acting as an investor or who would enter into transactions as agent for the investor - so, advice to trustees about scheme investments will be given to them in their capacity as investors.

Q39. I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article 53(1) of the *Regulated Activities Order* if the advice concerns a *personal pension scheme* but probably not if it concerns an OPS that is not a *stakeholder pension scheme*. In respect of the activity of advising on investments, the same factors apply to advice given to a member as apply to advice given to trustees (see Q38). But a particular factor will be whether the member is himself *buying or selling a security or relevant investment* (a "regulated investment").

It is usually the case that, where regulated investments are held under trust, the person for whose benefit the investments are held will acquire a beneficial interest in the investments. Such interests are regulated investments in their own right under article 89 of the *Regulated Activities Order*. In addition to advice that may fall under article 53(1) of the *Regulated Activities Order*, giving advice to *members of a pension scheme* could amount to *advising on conversion or transfer of pension benefits* where the advice relates to rights or interests under a pension scheme which provides *safeguarded benefits* (see ■ PERG 2.7.16GG). This is the case regardless of how the rights or interests are held (see ■ PERG 12.6). Where an OPS that is not a *stakeholder pension scheme* is concerned, however, the interests obtained by members are specifically excluded from being regulated investments (see article 89(2) of the *Regulated Activities Order*). This means that a member of a money purchase OPS does not acquire a regulated investment simply through having a beneficial interest in investments held under the trust for the purpose of providing his benefits.

Similarly, an interest in investments that result from a member having made additional voluntary contributions and which are held under the trust for his benefit will not be a regulated investment. So, advice to the member on the merits of his making additional voluntary contributions under his OPS will not be regulated advice.

The position with *stakeholder pension schemes* and *personal pension schemes* (including free-standing additional voluntary contributions schemes) is different. The rights under such a scheme (whether it is trust-based or contractual) are a specific type of regulated investment. So, advice on the merits of joining or leaving, or of exercising certain rights under, such a scheme will be regulated advice. This is the case with a stakeholder pension scheme even if the scheme is also an OPS. More detailed guidance on the meaning of rights under a personal pension scheme and the circumstances in which advice about such rights is regulated is in ■ PERG 12 (Q15 to Q20). That guidance will apply equally to rights under a stakeholder pension scheme.

Q40. I provide administration services to the providers of pension products such as insurers, unit trust managers, contractual scheme managers or banks. Is my position any different to that of a person who provides administration services to pension scheme trustees?

Potentially, yes. This is because:

- you are unlikely to be *assisting in the administration and performance of a contract of insurance* because of the exclusion in article 39B of the *Regulated Activities Order* for persons who manage claims on behalf of a regulated insurer; and
- although you are likely to be carrying on *dealing or arranging* activities if you handle such things as arranging new policies or units, additional payments, surrenders, switches or assignments, some of the exclusions may not apply to you, for example:
 - the exclusions in articles 22 and 29 of the *Regulated Activities Order* (see Q33) will not apply because you will be remunerated by the authorised person rather than by the trustee; and
 - the exclusion in article 69 of the *Regulated Activities Order* (see Q35) will not apply because, as a group company of the insurer, you will not be providing services solely to it but also providing services directly to the trustees on behalf of the insurer.

Q41. Does the fact that I provide administration services to the providers of pension products such as insurers on an outsourced basis and act in their name affect my position?

No. The need for *authorisation* or exemption depends on the nature of the activities that you carry on. The mere fact that you may carry on the services under your authorised client's name does not, of itself, remove the need for you to be authorised or exempt in your own right if the services you perform involve *regulated activities*.