

**CONDUCT OF BUSINESS SOURCEBOOK (PENSION TRANSFERS) (No 2)  
INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 138C (Evidential provisions); and
  - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. Part 1 of Annex B comes into force on 4 October 2018.
- D. Annex A comes into force on 1 October 2020.
- E. Part 2 of Annex B and Annex C come into force on 1 January 2019.
- F. Part 3 of Annex B comes into force on 6 April 2019.

**Amendments to the Handbook**

- G. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Training and Competence sourcebook (TC)	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Perimeter Guidance manual (PERG)	Annex C

**Citation**

- H. This instrument may be cited as the Conduct of Business Sourcebook (Pension Transfers) (No 2) Instrument 2018.

By order of the Board  
27 September 2018

## Annex A

## Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

## Comes into force 1 October 2020

## 2 Competence

## 2.1 Assessing and maintaining competence

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## Supervisors

2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well (except where ~~the employee is giving personal recommendations on retail investment products or advising on P2P agreements, see TC 2.1.5R~~ applies).

2.1.5 R Where an *employee* has not been assessed as competent to do so and:

(1) ...

(2) *gives advice on P2P agreements to retail clients, the firm must ensure that the individual supervising and assessing that employee has attained an appropriate qualification for giving personal recommendations on retail investment products to retail clients; or*

(3) undertakes the activity of a pension transfer specialist, the firm must ensure that the individual supervising and assessing that employee has attained an appropriate qualification for undertaking the activity of a pension transfer specialist and an appropriate qualification for giving personal recommendations on retail investment products to retail clients.

...

2.1.5I ...

Knowledge and competence requirements for a pension transfer specialist

2.1.5J R TC 2.1.5KR applies to a firm advising on pension transfers, pension conversions and pension opt-outs.

- 2.1.5K R A firm must not, for the purposes of TC 2.1.1R, assess an employee as competent to carry on activity 11 in TC Appendix 1 until the employee has attained each module of an appropriate qualification for giving personal recommendations on retail investment products to retail clients (i.e. in addition to an appropriate qualification for activity 11).
- 2.1.5L G The effect of TC 2.1.5KR is that an employee undertaking the activity of a pension transfer specialist must be qualified to the same standard as if that employee were providing investment advice to retail clients on retail investment products (in addition to attaining an appropriate qualification for activity 11).
- 2.1.5M G An employee who only carries on activity 11 of the activities included in TC Appendix 1 is not a retail investment adviser. As such, the rules in this section applicable to retail investment advisers are not relevant to employees who only advise on pension transfers and pension opt-outs.

#### Qualification requirements before starting activities

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- 2.1.7 R A firm must ensure that an employee does not carry on any of the following activities without first attaining each module of an appropriate qualification:
- (1A) giving personal recommendations on and dealing in securities which are not stakeholder pension schemes, personal pension schemes or broker funds; or
  - (1B) giving personal recommendations on and dealing in derivatives; or
  - (2) the activity of a broker fund adviser; or
  - (3) advising on syndicate participation at Lloyd's; ~~or~~
  - (4) ~~the activity of a pension transfer specialist.~~ [deleted]

- 2.1.7A R A firm must ensure that an employee does not undertake the activity of a pension transfer specialist without first attaining each module of an appropriate qualification for undertaking the activity of a pension transfer specialist and each module of an appropriate qualification for giving personal recommendations on retail investment products to retail clients.

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#### Selecting an appropriate qualification

- 2.1.10 E (1) This rule applies for the purposes of TC 2.1.1R, TC 2.1.5R, TC 2.1.5HR, TC 2.1.5KR, TC 2.1.6R, TC 2.1.7R, TC 2.1.7AR, TC 2.1.9R, TC 2.2A.1R, TC 2.2A.3R and TC 2.2A.6R.

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**App 4.1 Appropriate Qualification tables**

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App  
4.1.1AE

Part 1B: The non-Retail Distribution Review activities (non-RDR activities)

Activity Number	Non-RDR Activity (non-overseeing activity)
...	
11	Undertaking the activity of a <i>pension transfer specialist</i> (see also <i>TC 2.1.5KR</i> )
...	

...

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1: Comes into force 4 October 2018

#### **9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)**

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#### **9.4 Suitability reports**

Providing a suitability report

9.4.1 R *A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:*

...

(4) enters into a ~~pension transfer, pension conversion or pension opt-out~~.

...

9.4.2A R If a firm makes a personal recommendation in relation to a pension transfer or pension conversion, it must provide the client with a suitability report.

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#### **19 Pensions supplementary provisions**

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

...

Guidance on assessing suitability

19.1.6 G ...

(4) To demonstrate (3), the factors a firm should take into account include:

...

(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;

...

- (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.

#### 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.

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Record keeping and suitability reports

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- 19.1.9 G If a *firm* proposes to advise a *retail client* not to proceed with a *pension transfer, pension conversion or pension opt-out*, it should give that advice in writing.

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.

**Part 2: Comes into force 1 January 2019**



**19 Pensions supplementary provisions**

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

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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.

**Part 3: Comes into force 6 April 2019**

**19 Pensions supplementary provisions**

...

**19 Assumptions**

**Annex  
4C**

This annex belongs to *COBS 19.1.2BR* and *COBS 19.1.3AR*.

Assumptions			
R			
1	(1)	...	
			...
			...
	(2)	The assumptions are:	
		...	
		(d)	the annuity interest rate for post-retirement <i>limited price indexation</i> based on the <i>RPI</i> with maximum pension increases less than or equal to 3.5%, or with minimum pension increases more than or equal to 3.5%, is the rate in (c) allowing for increases at the maximum <u>or minimum</u> rate of pension increase <u>respectively</u> ; otherwise it is the rate in (a);

		(e)	the annuity interest rate for post-retirement <i>limited price indexation</i> based on the <i>CPI</i> with maximum pension increases less than or equal to 2.5%, or with minimum pension increases more than or equal to <del>3.5%</del> <u>3.0%</u> , is the rate in (c) above allowing for increases at the maximum <u>or minimum</u> rate of pension increase <u>respectively</u> ; <del>where minimum pension increases are more than or equal to 2.5% but less than 3.5%</del> the annuity rate is the rate in (c) above allowing for increases at the minimum rate of pension increase; otherwise it is the rate in (b) above;
		...	
	...		

## Annex C

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 12 Guidance for persons running or advising on personal pension schemes

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### 12.6 Advising on conversion or transfer of pension benefits

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Q35. When does a firm advise on conversion or transfer of pension benefits when it provides triage services?

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.

After PERG 12.6 (Advising on conversion or transfer of pension benefits) insert the following new Annex. The text is not underlined.

#### 12 Annex 1G Examples of what is and is not advising on conversion or transfer of pension benefits

Example	Is this advising on conversion or transfer of pension benefits?
<p><i>Firm A has a triage conversation with customers. It gives them factual information about safeguarded benefits and flexible benefits and describes the requirement to take advice on conversion or transfer of pension benefits and the cost of transfer. In addition the firm explains the features of pension schemes with flexible benefits and pension schemes with safeguarded benefits that make them more or less suitable for general groups of people. The firm also explains the cash equivalent transfer value.</i></p>	

<p>(1) During the triage conversation the customer's circumstances are covered. Based on these specific circumstances, the <i>firm</i> tells the customer that they should not take advice.</p>	<p>Yes. This is advice because it is effectively advice to stay in the occupational pension scheme and advice not to transfer.</p>
<p>(2) Same circumstances as example (1) but the <i>firm</i> tells the customer that they would be unlikely to recommend a transfer if the customer took advice.</p>	<p>Yes. This is likely to be an implicit recommendation not to transfer.</p>
<p>(3) After giving the factual information set out at the start of this table and taking into account the customer's specific circumstances, the <i>firm</i> tells the customer it will not provide them with <i>advice on conversion or transfer of pension benefits</i>.</p>	<p>The <i>firm</i> will not give regulated advice in these circumstances if it tells the customer that it will not give them advice. The <i>FCA</i> thinks that <i>firms</i> should be able to turn down business they do not want to carry out without this being interpreted as <i>advising on conversion or transfer of pension benefits</i>. Refusing to do business with someone is not consistent with having an advisory relationship with them. (A similar issue arises under the <i>regulated activity of advising on investments</i> - see example F(12) at <i>PERG 8 Annex 1G</i>.)</p>
<p>(4) After giving the factual information set out at the start of the table, the <i>firm</i> signposts sources of information on them, including an option to take advice.</p> <p>The <i>firm</i> leaves it to the customer to decide whether or not to take advice.</p>	<p>No. The general context of the information provided and the neutral way in which it is presented should not involve advice.</p> <p>A <i>firm</i> may give advice if it provides an opinion on whether the customer should go on to take advice or if it uses language which may be perceived as influencing a customer's decision to take advice.</p> <p>A <i>firm</i> does not necessarily give advice by bringing obviously relevant facts to the attention of a customer who wants to transfer, even if those facts show that a transfer would be a poor decision.</p>
<p>(5) After giving the factual information set out at the start of the table, the <i>firm</i> provides the customer with the transfer value comparator (TVC) prepared in accordance with <i>COBS 19.1.3AR</i>.</p>	<p>Yes. This is likely to be advice as the TVC is prepared using personal information and is objectively likely to influence the customer's decision to transfer or remain in the scheme.</p> <p>Occupational schemes and employers providing the TVC to scheme members should consider whether they are providing the TVC by way of business (<i>PERG 2.3</i>) and require authorisation.</p>