

How much should you tell them?

A discussion paper for DB
plan trustees



EVERSHEDS
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A discussion paper for defined benefit plan trustees on:

- whether to include transfer options in pre-retirement communications, and
- what support to give to members who request a transfer value

1. Introduction

1.1 A defined benefit (DB) occupational pension has long been regarded as the “gold standard” in pension provision: a regular income that should last as long as you do, immunity from the ups and downs of the stock market, some provision for inflation protection, and benefits for survivors - what could be better?

1.2 And yet in recent years a combination of the new “pension freedoms” introduced in April 2015, and record transfer values being offered by plans, has led growing numbers of members to conclude that transferring out of their DB plan to a defined contribution (DC) vehicle may be a better option. According to estimates from the Pensions Regulator (TPR) provided to Royal London, around 80,000 members undertook a pension transfer in 2016/17 and roughly 100,000 did so in 2017/18, with average transfer values around the £200,000 mark. The focus on transfers out has been so great of late that TPR apparently recently wrote to several DB plans urging them to consider cutting their generous transfer value terms for members.¹

1.3 Against this backdrop, DB pension plan trustees face a genuine dilemma. Should they engage with the growing interest in pension transfers, proactively alerting members to their rights, helping them to source financial advice and perhaps contributing to the cost of that advice? Or should they provide the minimum amount of information required by law, offer transfer values only on request and leave members to seek financial advice as required by law or otherwise as they wish?

1.4 The purpose of this paper is to assist DB plan trustees who are wrestling with this dilemma. We do not suggest that there is a simple right answer, and there are passionate views on both sides of this debate. We do however note that current practice varies widely between plans and that individuals who are members of more than one plan will often have inconsistent experiences.

1.5 We hope that this paper will help trustees to make a realistic assessment of the pros and cons of engaging with members over transferring their DB pension to a DC vehicle – and the legal issues and risks in either case - and assist trustees to reach a sensible and well-informed conclusion on the issue.²

¹ Financial Times 28 August 2018 “Pension schemes at risk from lump sum payouts, warns regulator”. See also TPR’s written evidence to the Work and Pensions Committee Pensions Costs and Transparency Inquiry: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/pension-costs-and-transparency/written/88609.html>.

² This paper looks at routine transfer activity but not incentivised exercises such as enhanced transfer value exercises, pension increase exchanges etc, where different considerations will apply. We do not deal with issues around the calculation of transfer values – that would be a lengthy paper in itself! We have assumed throughout that a transfer of DB benefits will be used to acquire money purchase benefits.



2. Current approaches

- 2.1 The approach taken by occupational pension plans with regard to pension transfers varies very considerably. At one end of the scale are trustees who are passionate about the advantages and protections of DB and who are cautious about doing anything in the transfer out space which goes beyond the bare legal minimum required of them. These plans may take the view that doing anything more than the legal minimum risks “mis-selling” transfers out in a way which could expose the trustees to liability in the future.
- 2.2 At the other end are plans which pro-actively engage with transfers by doing one or more of (a) referring to the availability of a transfer value as an option in retirement packs (without providing figures); (b) providing transfer value figures as a matter of course in retirement packs without waiting to be asked; and (c) sometimes even paying some or all of the cost of financial advice for those considering a transfer. These plans may take a broader view of the trustees’ fiduciary role and legal responsibilities, and the view that, since many members will take advantage of the freedom and choice reforms, it is in members’ interests – and lower risk for the trustees – if the plan embraces this and takes some control of the process.

3. What is the minimum that the law requires of trustees?

- 3.1 Members can take a transfer payment on a statutory or, if permitted by the plan, non-statutory basis. There is more information in the Appendix on what this means. The process and communications in relation to statutory and non-statutory transfers tend to be broadly similar.
- 3.2 There are limited legislative obligations on trustees to provide members with information on their rights and options in relation to transferring out their DB pension entitlements. Broadly, when members cease to accrue benefits under the plan, they must be given a summary of their options if they are below normal pension age – this would include the option to take a transfer payment. Trustees must also provide a cash equivalent transfer value (CETV) on request from a deferred member who is at least a year away from normal pension age. Legislation and regulatory guidance are not in general prescriptive as to the precise form in which this information is supplied. The main things that trustees have to tell members in respect of a transfer of DB benefits are set out in more detail in the Appendix.

- 3.3 The latest European IORP Directive³ (IORP II) is also potentially relevant here as it imposes new obligations in relation to pensions disclosure. It is due to be implemented into UK law by 12 January 2019 but, as yet, we do not know what that law will look like (and, indeed, to what extent Brexit may interfere with its implementation). IORP II puts an emphasis on telling members about their benefits and options and highlights the need to explain “pay-out options” to members in the pre-retirement phase. One view is that this supports the notion that members should at least be reminded in pre-retirement communications that a transfer value is available. That said, even if the requirements of IORP II become part of UK law, we consider it unlikely that this will result in significant alteration to UK disclosure rules around transfers – certainly, IORP II does not impose a requirement to provide all members with an individual transfer value automatically. Again, for those who are interested, there is more detail on the IORP II disclosure requirements in the Appendix.
- 3.4 The main focus of this paper is on whether DB trustees should provide their members with information about, and assistance with, transfer out options which go beyond the minimum legislative requirements under UK law.

4. What is the case for a minimalist approach?

- 4.1 Some pension fund trustees take the view that it is in the interests of their members and in line with their duties as trustees to do no more than the minimum that the law requires when it comes to transfers out of their plan. They may justify this on a number of grounds – some of the key points are summarised below.
- 4.2 Trustees are legally required to act for a proper purpose, as emphasised in the recent British Airways case.⁴ **The primary purpose of a DB pension plan might be viewed by some as to provide a regular income in retirement.** The plan rules may be quite explicit about this but, even where the purpose is stated in more general terms (e.g. along the lines of “providing benefits”), it might well be argued that it is implicit in the nature of a DB plan that these benefits should primarily take the form of a regular income in retirement. On this basis, trustees may consider that acting to enable or encourage transfers (beyond their legal minimum duties) is simply not part of their role of acting for the proper purpose of the plan.

- 4.3 **Members already have a right to request a CETV** if they wish, and trustees may feel that anything beyond this could start to look like inducement or encouragement to transfer out.
- 4.4 **The Financial Conduct Authority (FCA) and TPR both support the view that staying in a DB plan will in most cases be in a member’s interests.** TPR’s April 2015 “Guidance on DB to DC transfers and conversions” (the **TPR Guidance**) says “...[w]e believe it is likely to be in the financial interests of the majority of members to remain in their DB scheme”. Similarly, the FCA decided in March 2018 to maintain its existing guidance that “an adviser should start from the assumption that a transfer will be unsuitable”.

By not acting in a way which could stir up interest in transfers, trustees may consider that they are “protecting members from themselves”. They may feel that the risks of sub-optimal financial outcomes or worse – the risk of members falling prey to a pension scam – are minimised if members are not presented with temptingly large transfer value sums, or even reminded that these are available if they ask.⁵ Recent statistics from the FCA and TPR show that pension scam victims lost an average of £91,000 each in 2017 – these are life-changing sums of money for most people.

- 4.5 **To go beyond what the law requires and provide members with additional support for transferring out of a DB plan might leave the trustees and/or employers open to future legal challenge.** The PPI mis-selling saga suggests that, where there are individuals who – with the benefit of hindsight – end up out of pocket, and claims management companies which need to make a living (particularly as PPI winds down), there is every risk of former DB members seeking redress from plans for wrongly facilitating, encouraging or promoting transfers which ended up not being in their interests.
- 4.6 Market practice will also be a relevant factor here. Whilst the evidence is not scientific, and the position is developing, the indications are that **most trustees do not currently supply transfer values proactively** as part of member communications.⁶ There is often emotional comfort – and sometimes legal protection – to be derived from following the herd.
- 4.7 A direct comparison is not straightforward, but **the protection offered by the Pension Protection Fund (PPF) to DB members in the event of corporate failure may well be superior to the compensation provided to DC savers by the Financial Services**

³ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision.

⁴ British Airways PLC v Airways Pension Scheme Trustee Limited [2018] EWCA Civ 1533.

⁵ Not overtly flagging up the availability of transfer values could also reduce the onerous due diligence that trustees might otherwise have to undertake on members’ chosen receiving DC vehicles: see footnote 9.

⁶ See, for example, the LCP survey referenced in footnote 8.

Compensation Scheme (FSCS). The FSCS rules are very complex. However, in very broad terms, the FSCS covers 100% of a pension account if it is directly managed under a life insurance contract but only £50,000 per person per firm for pension funds held directly in non-insurance investments. This assumes that the investments are regulated in some way – in the event that a DB member were to become the victim of a scam on a transfer out of the DB plan, the DC investments may well be unregulated and therefore would not be covered by the FSCS at all. Whilst the chances of a DC provider failing may be slim, transfer scams do occur and the coverage of the FSCS is not universal. The PPF, on the other hand, replicates 100% of pension for DB members above normal pension age and 90% of pension for other members (up to the PPF cap, currently around £39,000 at age 65).

The very fact that it is difficult to weigh up the relative merits of PPF versus FSCS protection (this may depend on individual factors such as the age of the member and the value of the DB benefits, the member's attitude to risk, the covenant of the DB employer, and the sustainability of the intended DC vehicle) arguably also militates against an approach of facilitating DB transfers out for all members.

- 4.8 By facilitating transfers, a DB plan may find that **those who transfer out are "selecting against" the plan**, potentially damaging the prospects of the members who are left behind. The TPR Guidance says that trustees should consider the risks presented by transfers to the likelihood of members receiving their benefits in full. For example, it may be that those in poor health or with no dependents – in other words, the lower risk beneficiaries from the plan's and sponsor's perspective – are more likely to transfer out. This may adversely affect the underlying funding position of the remaining plan. Similarly, a large volume of transfers could cause cash flow problems for a plan, possibly forcing it to sell illiquid assets, to the detriment of those who are left behind.

A freedom of information request submitted by Royal London in 2018 showed that TPR sent letters to a number of large pension plans that have been experiencing a high volume of transfer requests, as part of a drive to protect members from unsuitable transfers. The letter also raised concerns that if trustees offer overly generous transfer values to those leaving the plan (particularly where the plan was in deficit), it could be detrimental to those members left behind.⁷



- 4.9 Trustees who go the extra mile and choose to facilitate financial advice for transferring members may find it **difficult to identify appropriate sources of financial advice** for members. This increases the risk of trustees signposting members to advice providers who under-perform – with the consequent risk of trustees being regarded as responsible as a result. Recent FCA investigations suggested that, of the advice taken by a sample of British Steel plan members, only around half was demonstrably "suitable". How would trustees know that they had signposted advisers able to provide a good service to their members?
- 4.10 **In essence, therefore, the argument against doing more than the law requires is that the legal requirements around transfer values have been set for very good reasons – to reflect the nature of DB plans, and to provide consistency across the industry. It is not for trustees to decide unilaterally that they want to promote or facilitate transfers out from their plan – and to go the extra mile in this way runs the risk of legal challenge.**

⁷ This was the second FOI request made by Royal London in 2018. See also the press coverage referenced in footnote 1.



5. Why might trustees go further?

5.1 In the last section we identified a range of factors that might lead DB trustees to take a minimalist – albeit legally compliant – approach to engaging with members over transfers out to DC arrangements.

5.2 But a growing number of trustees are coming to the conclusion that they should be doing more. For example, a recent survey by LCP⁸ found that in around one in three plans' trustees are now providing CETV quotes in pre-retirement information as a matter of course, rather than waiting for members to request them. Our own anecdotal evidence suggests the same, and we are also aware of an increasing numbers of plans which flag up to members that a transfer value is available as a retirement option, even if they don't proactively quote figures. We also know of a handful of DB plans which go – or are considering going – the extra mile to identify one or more favoured firms of financial advisers to signpost to members who need or want to take financial advice. Some plans and employers may even make a financial contribution towards the cost of such advice.

5.3 In this section we consider the case for DB trustees taking proactive steps to engage with and support members on transfers out. The main arguments in favour are summarised below.

5.4 **The advent of pension freedoms in 2015 has changed the traditional understanding of the function and purpose of a pension plan.** It doesn't follow any more that pension benefits are about only income in retirement. Since the law now explicitly acknowledges that DC accounts do not have to be used to buy annuities, why should it still automatically be the case that the legal purpose of a DB pension plan is only about an income for life?

In fact, DB pension rules have always made provision for lump sum payments (notably the 25% tax free lump sum, and the trivial commutation of smaller value pensions) so this is little more than a change of emphasis. The option to transfer out is provided for by law and will be reflected in the plan rules. As such, highlighting the option of a transfer out is arguably not inconsistent with the purpose of a DB plan – it is, in fact, part and parcel of it in a freedom and choice world.

The Court of Appeal in the recent British Airways case emphasised that “the purpose of a plan is to be ascertained from the contents of the instrument, an analysis of their effect and an understanding of the business context”. The “instrument” (i.e. the plan rules) will contain the option for a member to transfer out their benefits, and the “business context” here could be said to include the pension freedoms. And, as the TPR Guidance says, it is “not the trustees’ role to second-guess the member’s individual circumstances” or “prevent a member from making decisions the trustees might consider to be inappropriate”.

5.5 **Individuals expect to be empowered and informed and DB plans should use their knowledge and understanding to assist members.**

To put it colloquially, members “don't know what they don't know”, and trustees should not filter out information with which they don't feel members can be trusted. The TPR Guidance does not rule out or actively discourage the inclusion of a transfer value – or referring to its availability – in member communications: in fact it refers specifically to just this scenario and says “trustees can support members in a number of ways to ensure they have the information they need to make a fully informed decision...”. Explaining options legitimately open to a member, with appropriate risk warnings, is not the same as steering the member in a particular direction (which trustees should be careful not to do).

5.6 The requirement for **mandatory independent financial advice where DB benefits in the plan are worth over £30,000 provides an extra tier of protection** against inappropriate transfers. As mentioned above, Royal London's research shows that the average DB transfer is about £200,000 – well above the trigger point for mandatory advice. Assuming trustees carry out appropriate checks into the receiving plan, provide the scam warnings recommended by TPR and satisfy themselves that the member has obtained independent advice from a suitably qualified adviser where the £30,000 limit is reached, they should have a good defence to a claim or complaint brought by a member who subsequently regrets their decision to transfer.⁹

⁸ LCP DB member communication survey, August 2017.

⁹ See the Pensions Ombudsman determination in Mr N, considered below, and also the updated Pensions and Lifetime Savings Association working group guidance: <https://www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2018/180605Combating%20Pension%20Scams%20Code%20Version%202%20FINAL%20signed.pdf>.

5.7 Although regulators presume that most people would be better advised to remain in their DB plan, they also acknowledge that **there are situations where a transfer might have its advantages**. While maintaining that the starting assumption is that a transfer will be unsuitable, the FCA nonetheless acknowledges that this “does not prevent an adviser from recommending a transfer where this can be demonstrated to be suitable for the consumer”. Likewise, TPR says that “accessing their pension flexibly may be better suited to the financial interests of certain members in their particular circumstances”. These circumstances or factors could include:¹⁰

- 5.7.1.1 health (those with a shorter life expectancy may prefer to buy an enhanced annuity or leave the money invested tax efficiently for heirs)
- 5.7.1.2 flexibility (especially for unmarried members, those who wish to spend more earlier in retirement, or those with multiple pension arrangements)
- 5.7.1.3 the potential for access to more tax-free cash (this will often be a larger figure under a DC than a DB arrangement)
- 5.7.1.4 inheritance issues (changes to inheritance tax rules have made it more attractive to consider holding pension rights outside a DB plan)
- 5.7.1.5 concerns about the solvency of the sponsoring employer (members, particularly those below normal pension age, may lose out if their plan falls into the PPF)

The trustees cannot possibly know if a transfer is the right answer for any given plan member since they will know little or nothing of his or her personal circumstances. Only the individual member can take a decision on whether it is in his or her interests to take a transfer out of a DB plan – and he or she can only do this if furnished with the relevant information.

5.8 Just as trustees may be concerned about legal challenge if they provide information about a transfer which turns out badly, **trustees might also potentially face legal challenge if they fail to equip members to make well informed choices**, especially where a transfer out might have been to their advantage. If one accepts that information about transfer value options will usually be of relevance, interest and value to a member in reaching an informed decision on how to take his or her DB benefits, the risk of a member taking a sub-optimal decision increases as the amount of transfer value information provided to him/her decreases. The risk is then that a member who reaches a sub-optimal decision in circumstances where trustees choose not to provide transfer value information pro-actively might challenge whether the trustees have properly met their fiduciary duties.

Some support for this approach can be gleaned from the Pensions Ombudsman’s recent determinations in Mr R and Mr N. In Mr R,¹¹ the Ombudsman said that the trustees “had a fiduciary duty to provide Mr R with the relevant information to enable him to make a fully informed decision about his options...” (which the Ombudsman concluded would have resulted in the member accessing his benefits during his lifetime to avoid severely disadvantaging his widow). In Mr N,¹² a case where the member transferred out of a DB plan into a scam DC vehicle, the Ombudsman said that the authority responsible for the member’s pension was at fault because it failed to “alert him to the possible risks associated with the proposed transfer” and should have done more.

Nor are these the first such cases of their kind. In his determination in Cherry,¹³ the Ombudsman found that although the employer “was under no legal obligation to advise individual officers and employees on their tax and pension liabilities ... it was reasonable to expect [it] to have provided the salient information to Mr Cherry about the implications of re-employment”. And in Perrett,¹⁴ the previous Deputy Pensions Ombudsman echoed the conclusions of the House of Lords in Scally,¹⁵ and decided that the trustee had a “duty of care to ensure that [Mrs Perrett] was provided with accurate information which enabled her to make an informed decision”.

¹⁰ These arguments in favour of transferring are included in the Royal London ‘Good with your money guide’, ‘Five Good Reasons to Transfer your company pension... and five reasons not to’. As the title suggests, the guide also sets out the advantages to members of retaining DB benefits.

¹¹ The Estate of the late Mr R (PO-17639), 29 June 2018.

¹² Mr N (PO-12763), 11 July 2018.

¹³ Mr John Cherry (PO-7096), 22 December 2015.

¹⁴ Mrs Oona Perrett (PO-3750), 18 November 2014.

¹⁵ Scally v Southern Health and Social Services Board [1992] 1 AC 294. The House of Lords decided that it was “not merely reasonable, but necessary, in the circumstances postulated, to imply an obligation on the employer to take reasonable steps to bring the term of the contract in question to the employee’s attention, so that he may be in a position to enjoy its benefit”.

These cases of course all turn on their precise facts. And it might be too bold to conclude that these determinations support the proposition that transfer value figures should automatically be provided to all members in the run up to retirement. But, echoing the Ombudsman, one might at least argue that, for many members, a flag in pre-retirement communications that a transfer value is available is the sort of salient information that would help them to make an informed decision.

- 5.9 **Although most plans do not currently provide unsolicited transfer value quotations, an increasing number of plans are now doing so.** According to the 2017 LCP DB member communication survey, the proportion doing so has risen from 20% in 2015 to around one third in 2017, and anecdotal evidence suggests the percentage will increase. The same survey showed that an additional 45% of plans were now including the option to transfer in retirement documentation. On this basis, any legal and emotional comfort from following the herd in not pro-actively providing transfer value information might prove to be illusory.
- 5.10 Trustees concerned about outcomes for members will be aware that **if a sponsoring employer becomes insolvent, younger members in particular could face a significant cut in their DB benefits** due to the way in which PPF compensation is calculated. As outlined above, the actual impact of PPF protection depends on a range of member and plan specific factors.
- 5.11 For some plans, and depending on how **transfer values are calculated, transfers out could improve the overall funding position of the plan.** For example, it was reported that the Barclays Bank UK Retirement Fund went into surplus (on an IAS19 accounting basis) due to a high number of transfers.¹⁶ As members transfer out, the administrative costs of the plan are likely to fall, and transfers out may also be viewed by the sponsoring employer as a way of de-risking the plan, possibly in a more cost-effective way than other de-risking strategies.

That said, trustees should not place too much weight on arguments relating to the security of benefits and risk management as relevant factors in deciding on their approach to communicating transfer value information to members. Whilst the views of the sponsor are relevant, facilitating informed member decision-making is a more persuasive reason for trustees to offer information on transfers out.

- 5.12 **Trustees who want to go the extra mile are better placed than individual members to undertake appropriate due diligence on, and source, suitable advisers to provide members with impartial financial advice on transfers out.** Advice arranged in partnership with the plan in this way could substantially reduce the cost to members compared with the individual purchase of advice – and is also likely to act as a quality control measure. There could also be considerable administrative benefits – and less risk – for the plan in dealing with a smaller number of vetted advisers who are familiar with the features of the plan and its benefits, and have an interest in an ongoing relationship after any individual transfer has happened. We look at this issue in more detail later in this paper.

In essence, therefore, the argument in favour of trustees engaging with members more proactively on transfer out options is that, whilst statute may only require trustees to provide this information on request in limited situations, the developing pensions market and the advent of freedom and choice are broadening the ambit of DB trustees' fiduciary duties. It is no longer enough simply for DB trustees to wait for members to ask for transfer value information – and trustees who do this risk being found wanting.

¹⁶ FT Adviser 1 March 2018 "Barclays pays £4.2bn in pension transfers".

6. Other issues

6.1 What about the middle ground: partial transfers?

6.2 For some members, particularly those with long service in a single plan, the option of a partial transfer of their DB rights might represent the best answer. A combination of state pension rights and residual rights left behind in the DB plan could secure a baseline income whilst the transferred rights could be used more flexibly under pension freedoms.

6.3 There is no legal requirement to offer partial transfers (many plans do not offer this non-statutory option) and it raises practical issues. For example: which “part” of a member’s benefits are you transferring (plans may want to use the opportunity to insist that the part transferred includes any troublesome GMP benefits); what minimum level of transfer value applies; and what administrative complexity will this bring? A partial transfer also does not bring all of the advantages of a full transfer in terms of reduced liabilities and administration costs. Nonetheless, this could be a good option for some members. Trustees, together with employers, may wish to consider whether this is a lower risk way of offering members “freedom and choice” without wholly sacrificing their DB rights.

6.4 Independent financial advice and what happens if things go wrong?

6.5 The TPR Guidance makes it clear that, except where a transfer is employer-instigated, employers are not generally expected to pay for the financial advice obtained by members – this includes

where pre-retirement material routinely includes a transfer value. Nonetheless, many employers and trustees may feel (particularly in light of reports of alleged poor advice received by some British Steel plan members) that steering members towards a good independent financial adviser firm (IFA) with appropriate experience, and perhaps contributing to the cost of that advice, is appropriate.

6.6 So, irrespective of the amount of information on transfers included in member communications, there is also a decision to be made around what support to give to members who request a transfer value. There is clearly a spectrum: from doing nothing at one extreme, through suggesting one or more vetted IFAs for members to use, to meeting the costs of the financial advice at the other extreme.

6.7 By recommending (and perhaps paying for or towards the cost of) an IFA, the risk of poor member outcomes should be reduced. But, whilst the issue has never been tested publicly, the flipside of this paternalistic approach is that employers or trustees who are seen to endorse or vet advisers may be seen as partly responsible for the quality of the advice provided if things go wrong.

6.8 The more usual approach is for the employer to consider facilitating the provision of and/or paying for financial advice (although it is not completely unknown for trustees to do this). Where this is done properly, the real risk to the employer or trustees of successful claims from members for inadequate financial advice is low. By “doing it properly”, we mean the employer or trustees:



- 6.8.1 undertaking (and if necessary being able to demonstrate that they have undertaken) appropriate due diligence and research on the IFAs involved. This is to ensure that they are reputable and likely to give appropriate, unbiased advice, and that they have the scale and experience to provide a decent service to the members; and
- 6.8.2 being careful in how the position is communicated to the membership. It should be made clear that the employer and trustees are merely facilitating the provision of advice, and are not responsible for the IFA's advice or for any consequences flowing from that. The contractual relationship will be between the IFA and the member and any claim for loss will arise through that relationship.
- 6.9 The question sometimes arises whether it is better and/or safer for employers or trustees to facilitate advice through just one, or more than one, nominated IFA. The position is fairly balanced but the risks are probably marginally lower where more than one adviser is nominated since it looks less like a recommendation to use a particular IFA, and more like a general suggestion to take advice from a reputable adviser. It also spreads the risk of an IFA underperforming. Against this must be weighed the points that using multiple advisers may increase the likelihood of one of them underperforming, and that the costs may be slightly higher with multiple IFAs because the employer's or trustees' bargaining position with each adviser is diluted. All the due diligence and communication points made above apply equally here.
- 6.10 Finally there should be no benefit in kind issues for employers provided that the employer is not involved (directly or indirectly) in paying for the advice, and is simply facilitating its provision and using its commercial bargaining position to reduce the fees paid by the members.
- 6.11 It is tempting to default to the conclusion that any employer or trustee board that assumes a role in facilitating the provision of financial advice for plan members necessarily takes on more risk. But it is important to keep in mind that these risks can be managed via the processes described above, and that doing nothing also carries a risk. The case of the British Steel pensioners shows how things can go wrong when members are left to their own devices in terms of sourcing financial advice on DB transfer out options.¹⁷
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- ¹⁷ The recently formed Pensions Advice Taskforce particularly addresses this issue. See, for example, Retirement Planner June 27 2018 'PFS creates 'Pensions Advice Taskforce' in wake of British Steel scandal'.



Appendix

1. Statutory and non-statutory transfers

- 1.1 There is a prescriptive legislative regime governing members' rights to statutory cash equivalent transfer values (CETV). Where a deferred member wishes to transfer their CETV to another registered pension plan at least one year before reaching normal pension age, they have a statutory right to do so without consent.
- 1.2 In addition, members may also be able to take a non-statutory transfer payment under their plan's governing documentation. Non-statutory transfers are commonly relevant when a member is considering their retirement options close to or after normal pension age (as a statutory CETV can only be taken up to one year before normal pension age) or where plans permit partial transfers.
- 1.3 Although legislation does not prescribe how non-statutory transfers should be calculated, guidance issued by TPR states that non-statutory transfers would normally be calculated on the same basis as statutory transfers. The process and communications in relation to the two types of transfer tend to be broadly similar, though there are some additional issues to be considered in relation to non-statutory transfers, notably around trustee discharge from liability.

2. Minimum disclosure requirements in relation to the right to transfer

- 2.1 The main obligations on trustees in relation to the rights of members to transfer their DB benefits are summarised below.
 - 2.1.1 Where a member ceases to accrue benefits under the plan, provide a summary of their options if they are below normal pension age. This would include options to take a transfer payment. However, this is only relevant where current active members leave pensionable service.

- 2.1.2 Provide a statement that the member may be required to take independent financial advice before the member may transfer the DB benefits to acquire flexible (i.e. money purchase or cash balance) benefits. This is basic plan information which must be provided to all members.
- 2.1.3 Where members request a transfer value:
 - if the transfer value of the member's DB benefits under the pension plan is £30,000 or less, the member must be reminded about the information on transfers available from TPR, The Pensions Advisory Service and the FCA to assist them. They should also be told that the plan is eligible for the PPF and that the Board of the PPF exists. Trustees must also recommend that, although there is no obligation to take independent financial advice, the member nevertheless take advice before deciding whether to transfer.
 - where the transfer value is greater than £30,000, there is a requirement for the member to obtain independent financial advice. The trustees must obtain confirmation from the independent financial adviser that such advice has been provided before making the transfer.
 - various types of information about the transfer value must be sent with the statement of entitlement including a statement as to whether a reduction has been applied to the CETV.

- 2.2 Trustees are also encouraged by TPR to ensure that members receive clear information about the risk of transferring to a scam plan.
- 2.3 Members with DB benefits have a statutory right to request a transfer "statement of entitlement" once in every 12 month period. Plans may allow more frequent requests.

3. IORP II

- 3.1 Articles 36 to 44 of IORP II set out new EU disclosure requirements. The formal deadline for implementation into UK law is 12 January 2019 but it is currently unclear when implementation will take place and what form that will take.
- 3.2 IORP II includes requirements to provide information to members on options available in receiving their retirement benefits and, where members have the right to transfer pension rights, "further information about the arrangements relating to such a transfer" (Article 37). During the "pre-retirement phase", plans will also have to provide members with information about the "benefit pay-out options available in taking their retirement benefits" (Article 42). We do not currently know how these requirements will be interpreted in (or transposed into) UK law but it is not envisaged that IORP II will result in very material change to UK disclosure rules around transfers – for example so as to impose a requirement to provide all members with an individual transfer value (otherwise than on request).





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