



Bulk transfers without consent: money purchase benefits without guarantees

Guidance for trustees

April 2018

**Bulk Transfers without consent: money purchase benefits without guarantees
– guidance for trustees**

| | |
|------------------------------------------------------------------------------|----|
| Bulk Transfers without consent: money purchase benefits without guarantees 1 | |
| Guidance for trustees | 1 |
| Section 1 - Introduction | 3 |
| Section 2 - Trustee Duties | 4 |
| Section 3 - Considering a bulk transfer | 5 |
| Part 1: legislative requirements | 5 |
| Statutory requirement to seek advice | 5 |
| What does ‘appropriate adviser’ mean? | 6 |
| How trustees should determine independence – things to consider: | 7 |
| When is advice not required? | 9 |
| Part 2: good practice for all bulk transfers | 11 |
| Choosing an adviser– general guidance | 11 |
| What should the advice cover? | 11 |
| How to assess a receiving scheme | 13 |
| Section 4 – charge cap maintenance and extension | 17 |
| Fund mapping | 17 |
| Section 5 - Good practice | 20 |
| Communications with members | 20 |
| Data quality | 21 |
| Documentation | 21 |
| Transition management | 23 |
| Section 6 - Additional information | 24 |
| Potential tax consequences | 24 |

Section 1 - Introduction

1. This non-statutory guidance has been produced by the Department for Work and Pensions in support of the amendments to regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the Preservation Regulations 1991”), and regulation 4 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (“the Charges and Governance Regulations 2015”), effective from 6 April 2018.
2. These amendments, set out in new regulations 12(1B) and 12(7)-(10) of the Preservation Regulations, and regulations 4(3) and 4(4) of the Charges and Governance Regulations, change the conditions to be met when considering bulk transfers of certain money purchase rights of members of occupational pension schemes.
3. This guidance is intended to assist trustees in complying with the new regulations covering bulk transfers for those money purchase rights that do not include guarantees (“relevant money purchase rights”¹). These requirements are in addition to trustees’ responsibilities under law (both statute and trust), and do not replace those responsibilities. This guidance is intended to be used alongside the DC Code² issued by the Pensions Regulator (TPR), and TPR’s guidance for trustees on managing DC schemes³. Neither DWP nor TPR can provide a definitive interpretation of the legislation which is a matter for the courts.
4. Benefit types not defined above are excluded from this new process, and must continue to follow the existing route covered in regulation 12(1) and associated paragraphs of the Preservation Regulations 1991. This existing route also remains available until 30 September 2019 for those money purchase rights that can use the new approach described in this guidance, to avoid those transfers already underway incurring additional costs.
5. This guidance refers to trustees throughout. In cases where an employer has the power to direct a bulk transfer, this guidance is intended to assist them, although readers should note that employers have differing legal duties which this guidance does not detail.

¹ “relevant money purchase rights” are rights to money purchase benefits, where the assets held for the purpose of providing those benefits do not include any guarantee or promise in relation to the amount of the benefits to be provided, or the amount available for the provision of the benefits. Trustees should obtain legal advice if they are in doubt.

² <http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-occupational-dc-trust-based-schemes.aspx>

³ <http://www.thepensionsregulator.gov.uk/Trustees/managing-your-dc-scheme.aspx>

Section 2 - Trustee Duties

6. Trustees have a duty to:
 - Act in line with the trust deed and rules
 - Act for the proper purpose of the trust – which will include considering what beneficiaries have been promised
 - Act impartially
 - Act prudently, responsibly and honestly.
7. This broadly reflects guidance issued by The Pensions Regulator on trustees' duties and powers⁴.
8. Trustees are governed by trust law, which has developed over many years through Acts of Parliament and through case law. The basis of trust law is that one group of people (the trustees) hold assets for the benefit of another group of people (the beneficiaries).
9. When applied to a pension scheme, trust law provides the foundation for how trustees must act in relation to the scheme. These are a trustee's 'fiduciary' duties.
10. When considering a bulk transfer of members to another pension scheme without seeking individual consent, the trustees should ensure their decision is consistent with these principles, as an overriding consideration.

⁴ See under the trustees' duties and powers' at:
<http://www.thepensionsregulator.gov.uk/guidance/guidance-for-trustees.aspx>

Section 3 - Considering a bulk transfer

11. This section covers:

Part 1: legislative requirements

- Statutory requirement to seek advice
- What does 'appropriate adviser' mean?
- How trustees should determine independence – things to consider
- When is advice not required?

Part 2: good practice for all bulk transfers

- Choosing an adviser – general guidance
- What should the advice cover?
- How to assess a receiving scheme

Part 1: legislative requirements

Statutory requirement to seek advice

12. The legal requirements covering bulk transfers of relevant money purchase rights of occupational pension scheme members (as described in para 3) without consent are covered in regulations 12(1B) and 12(7)-(10) of the Preservation Regulations 1991.

13. Briefly, this states that a transfer without member consent of relevant money purchase rights between occupational pension schemes can take place when any of the following conditions is met:

- The transfer is to a scheme authorised under the Pension Schemes Act 2017, most commonly a master trust; or
- The transfer is between schemes where the controlling or principal employers of both schemes are within the same group of undertakings (such as in cases arising from corporate restructures – see further details in the section 'When is advice not required' in paragraphs 28-33); or

- The trustees of the transferring scheme have obtained and considered the written advice of an appropriate adviser whom they have determined to be independent from the proposed receiving scheme.

14. Although the independent advice requirement only applies in relation to transfers which do not fall under the first two bullets in paragraph 13, trustees may conclude that it would be helpful to seek advice in these other situations as well.

15. To note: The legislation does not detail the level of advice that trustees should seek, or require any recommendation on whether to transfer or not. However we would expect that, as a minimum, trustees ensure that if they rely on any recommendation, that these are in the best interests of the members.

What does 'appropriate adviser' mean?

16. Trustees are free to consult any person (including a legal person), including in the shape of an advisory firm, whom they reasonably believe to be qualified to give advice on the proposed bulk transfer by reason of that person's ability in, and practical experience and knowledge of, pension scheme management. This could be an adviser the trustees are already using, if they meet the relevant criteria, or more than one adviser within the same advisory firm.

17. Pension scheme management could include some or all of the following, although this is not a prescriptive list:

- Advising on the setting of an investment strategy for DC benefits/advising on investments
- Assessing the extent to which a DC scheme provides good value for members
- Governing and administering a DC pension scheme

18. Other relevant areas where additional knowledge might be helpful include:

- Powers under the rules, or other legal aspects of pension schemes
- Detailed understanding of rules and legislation relating to scheme wind-up, if applicable
- Detailed understanding of benefit structures such as with profits investments, the rates of employer and employee contributions, investment options and retirement options.

How trustees should determine independence – things to consider:

Box 1

What do the regulations say?

- (9) The conditions set out in this paragraph are that—
- a) within the year ending with the date of the transfer, the trustees of the transferring scheme have obtained and considered written advice in relation to the transfer from a person whom they reasonably believe to be qualified to give that advice by reason of that person’s ability in, and practical experience and knowledge of, pension scheme management (“the appropriate adviser”); and
 - b) the trustees of the transferring scheme have determined that the appropriate adviser is independent of the receiving scheme after considering whether, during the year ending with the date on which the advice was provided, the appropriate adviser (or, where the appropriate adviser is an undertaking, a group undertaking in relation to the appropriate adviser) has—
 - i) received payment for services from the receiving scheme;
 - ii) received payment from a service provider or a group undertaking in relation to a service provider; or
 - iii) received payment from the receiving scheme employer or a group undertaking in relation to the receiving scheme employer.

19. Trustees need to verify as far as they are able that any advice they are required to obtain is unbiased, and that the adviser (or advisory firm) has not been influenced in any way by the fact that they, or their firm, have received certain payments as described below.

20. Trustees must consider whether, in the year prior to the advice being received, the adviser (or advisory firm) has been paid for, advisory⁵ services, administration services, or investment services. This payment could be from the receiving scheme directly, from a service provider to the scheme (or a group undertaking in relation to that service provider), or from the receiving scheme employer (or a group undertaking in relation to that employer).⁶ The type of work covered could include advising the receiving scheme on investment strategy, providing full service pension administration, providing legal advice, plan design etc.

⁵ ‘advisory’ covers any type of consulting advice, whether regulated or not.

⁶ trustees should also consider any payments made by a service provider or employer (or their groups), not just those relating to the scheme.

21. Receiving payments for any of the above could be an indication that the adviser is not wholly independent from the receiving scheme, and that any advice they may give might not be considered impartial.
22. Trustees can make a determination that the advisers are independent of the receiving scheme, despite the adviser (or advisory firm) having received, within one year prior to the date the advice was provided, the type of payments described in para 20, although they should give this careful consideration and considerable weight.
23. In making such a determination, the trustees should give careful consideration to relevant factors including the type of services provided by the advisers, to whom such services were provided, the size of the payment, and the date of the payment. Trustees choosing to make a determination that advisers who have received the payments described in para 20 are independent should record their decision in writing, the factors they took into account in reaching that decision, the weight they attributed to each factor and their reasons.⁷
24. As part of the assessment of independence, good practice would be to obtain confirmation in writing from the adviser on whether they have carried out, or been paid for, the services mentioned above, in the year prior to the date they propose to give advice on the transfer. We suggest trustees carry out their own due diligence on this, and ask the adviser to provide further information if there is any ambiguity over a particular service.
25. Examples of the type of work which would *not* tend to call the adviser's independence into question might be a situation where the firm that employs the adviser, or an associated company, might have given advice to the receiving scheme's sponsoring employer in relation to matters unrelated to pensions, such as tax or assurance.
26. It may also be helpful when using an advisory firm, to request disclosures relating to any conflict of interest policies they operate, and review these for robustness, as an understanding of how conflicts are handled could contribute to an assessment of independence.
27. To note: Trustees are required by law to have a process in place to establish and operate adequate internal controls, which the Pensions Regulator expects to include identifying and managing any conflicts of interest among those involved in

⁷ This condition is stipulated by the Pensions Regulator in order to meet expectations around compliance.

running the scheme⁸, including trustees, service providers and advisers. The DC code sets out the controls to include as a minimum.

When is advice not required?

28. If you are transferring members to an Authorised Master Trust, you are not required by regulation to seek additional advice on the suitability of the scheme. This is because in order to become authorised, schemes have to satisfy minimum criteria, covering, amongst other things, governance and administration.
29. Authorisation can act as reassurance that the scheme meets these minimum quality standards. However, trustees are obviously not prohibited from seeking such advice as they deem necessary (for example in the qualitative areas of the transfer as covered in this guidance), in order to satisfy their fiduciary duty. Also, they should not assume that their fiduciary duty to act in members' interests is satisfied automatically by transferring members without consent to an authorised master trust. There are other aspects of the scheme design, including fund mapping/member charge considerations, that trustees will need to consider in addition in order to satisfy their fiduciary duty. The expectation is that advice would usually be taken in this instance, although this is not required by the regulations.
30. If the transfer is between employers who are within the same group of undertakings and satisfy the requirements in Box 2 below, there is no statutory requirement to obtain written advice. Again however, the comments in paragraph 29 relating to trustees properly exercising their fiduciary duty apply in these circumstances.
31. This exemption does not apply where there are "orphan" members – former employees of employers who are no longer connected (for example, their former employer has been wound up or sold). Trustees would still need to obtain independent written advice in relation to such members unless they were being transferred to a scheme authorised under the Pension Schemes Act 2017.

⁸ <http://www.thepensionsregulator.gov.uk/Trustees/investment-management-in-your-dc-scheme.aspx>

Box 2

What do the regulations say?

(8) The conditions set out in this paragraph are that—

- a) the transferring scheme employer and the receiving scheme employer are undertakings;
- b) the transferring scheme employer is a group undertaking in relation to the receiving scheme employer; and
- c) the member whose rights are to be transferred is a current or former employee of an undertaking which is a group undertaking in relation to the transferring scheme employer or the receiving scheme employer.

32. Below are some examples of groups of companies which would satisfy the requirements in the Box 2 above.

- Employer A and Employer B are subsidiaries of CXY Group Holdings Ltd. Each of Employer A and Employer B has its own pension scheme. Current and former employees of both employers can be bulk transferred between schemes A and B without having to obtain advice from an appropriate adviser.
- When Employer P acquires the business of Employer Q it also takes on Employer Q's DC Pension Scheme. Employer Q's scheme includes former employees of employer R, a subsidiary which they have previously sold. Subsequently, Employer P decides to create Scheme S into which the current and former employees of Employers P and Q are transferred. However, former employees of Employer R cannot be transferred under this provision.

33. Another example might be that of a group which, following a series of acquisitions has ended up with a large number of companies and pension schemes over the years and now wants to consolidate them. All current employers form part of the same corporate group.

Part 2: good practice for all bulk transfers

Choosing an adviser– general guidance

34. It is good practice to consider issues such as the person's or firm's:

- experience of, and competence in, assessing value for members in DC schemes
- experience of, and competence in, advising trustees on without consent bulk transfers - including knowledge and understanding of employer and trustee powers in relation to bulk transfers (although trustees will generally also wish to take legal advice)
- ways of working, including whether they offer a named person or department as a point of contact
- relevant and up-to-date qualifications or accreditations
- professional indemnity cover they have in place
- ability to conduct scheme benchmarking exercises (governance standards, security of assets, investment options, value for money etc)
- experience in overseeing legacy scheme rationalisation projects.

35. It may also be helpful to consider the adviser's knowledge of the transferring scheme and its operations (where this does not indicate a conflict of interests), although this should certainly not be valued above the skills and experience outlined above. It may also be useful to seek references.

What should the advice cover?

36. When commissioning an adviser, trustees might want to ask for advice on specific factors they need to take into account when making the decision to transfer to the receiving scheme; and satisfy themselves (a) they have the power to transfer, and (b) they should transfer. They may wish to seek advice in relation to the following aspects of the receiving scheme:

- The default investment strategy as well as the wider investment options. The Pensions Regulator has some useful advice on this on their website⁹;
- Size, current membership and how long it has been established

⁹ <http://www.thepensionsregulator.gov.uk/Trustees/investment-management-in-your-dc-scheme.aspx>

- The range of funds available for members to choose from
- How benefits can be withdrawn and what decumulation options are available
- Any costs or fees associated with transferring out of the transferring scheme— including transaction costs¹⁰, and any costs associated with being out of the market
- What do members and employers receive for what they pay, and what is the quality of these services? For example:
 - Scheme governance and management
 - Investment
 - Administration
 - Communications
- What are the member-borne charges (and transaction costs where applicable) associated with those services?
- Charging structures and initial and ongoing charge levels – including transaction costs associated with purchasing the investments
- Any proposal by the employer to cover any of the costs associated with the transfer – including transaction costs
- Any required one-off or ongoing employer contribution to cover some or all the costs of services.
- Governance framework
- Comparative powers between the transferring and receiving scheme’s trust deed and rules
- Security of assets – for example, whether arrangements are in place to protect member benefits in the event of the scheme being wound up, such as collecting and accounting for all the employer contributions
- Quality and performance of administration
- Communication strategy and tools, e.g. to enhance understanding of prospective retirement income needs and modelling alternative solutions.

¹⁰ Defined in the Occupational Pension Schemes (Charges and Governance) Regulations (SI 2015/879) as the costs incurred as a result of the buying, selling, lending and borrowing of investments. Typical transaction costs incurred from exiting a DC scheme would normally include a swing price or an anti-dilution levy in a single priced fund, or the difference between mid-point and bid price for a dual priced fund.

- Technology, including both back-end and front-end, covering the use of:
 - Investment platforms or other such mechanisms for pricing funds and instructing investments/disinvestments.
 - Member-facing technology to facilitate member instructions, such as fund switching support capability and protocols).
- Value for members both of the services paid for by the employer and by the member, not just in comparison to the receiving scheme but in comparison to other receiving schemes that it may be possible to transfer members into
- Any other receiving scheme features not available within the transferring scheme, or vice versa.

37. The above list is not exhaustive, and trustees could ask for additional or different information if they feel it would be appropriate. If specialist advice is required it may be necessary to engage more than one adviser.

38. It is helpful to ask the adviser to compare the above relevant aspects of the receiving scheme with the corresponding aspects of the transferring scheme, in order that balanced advice can be given.

39. Trustees must obtain and consider written advice within 12 months ending with the date of transfer. The advice cannot be relied upon to make a decision to transfer if it was not obtained and considered within 12 months ending with the date of transfer. A new assessment must take place in such cases, in order to meet the statutory duty.

How to assess a receiving scheme

40. Trustees have fiduciary duties to their members and these should be at the forefront of their minds when considering the appropriateness of a receiving scheme, and the overriding consideration in deciding whether or not the 'without consent' transfer of accrued funds being contemplated is consistent with these duties. Experience shows that collaboration between the trustees and employer (or service provider in the case of a master trust) is critical to achieving good outcomes for scheme members.

41. The following covers some of the things trustees should take into account when considering a receiving scheme. Please note: this is intended to be a principle-based process. It is not intended to act as a tick list, or an exhaustive list of aspects to be considered.

42. The Pensions Regulator has a full and detailed guide on assessing value for members¹¹ and the advice in this guide should be used in conjunction with the relevant section of the DC Code¹².

43. General principles:

- There is no single test that needs to be met in relation to member outcomes. The decision to transfer is based on both quantitative and qualitative considerations.
- The receiving scheme should be compared to the transferring scheme in terms of value for members, and trustees need to be satisfied that overall the transfer to the new scheme is in members' interests.
- Not every aspect of the receiving scheme must be equal or superior to the transferring scheme for trustees to conclude that the proposed transfer is in the members' interests. The trustees can decide that one of the factors in the receiving scheme is sufficiently improved to outweigh another being slightly worse.
- In cases where only certain cohorts of the membership are transferred, trustees should also take into consideration the members that are not transferred. For example, the bulk transfer of some members may increase or reduce the amount available from the sponsor to maintain or improve the scheme.
- Whilst desirable, it is not critical to maintain the "absolute value" of a member's pot from just before to just after a transfer if, in the trustees' opinion, other aspects of the receiving scheme contribute to it being in members' interests, comparative to the transferring scheme. The section in this guidance on 'Transition Management' (see paragraphs 70 and 71) is useful on this point.
- Trustees are advised to take steps to ensure they understand the impacts on different cohorts of members, as these will be different depending on the life stage the member is at and other scheme-specific factors.
- Trustees are not necessarily constrained in their decision by different/higher member-borne charges applying in the receiving scheme compared to the transferring scheme, if the receiving scheme offers value for members, as above.

¹¹ <http://www.thepensionsregulator.gov.uk/trustees/value-for-money-in-your-dc-scheme.aspx>

¹² <http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-occupational-dc-trust-based-schemes.aspx>

- Trustees and their advisers should use reasoning and judgement when allowing for any features to offset each other.
- It is not necessary for members to be moved into identical funds. Trustees ought to consider whether the level of risk and return is broadly appropriate, but there is no obligation for members to be moved into identical investments; the receiving default arrangement, however different from the default of the transferring scheme, will often be an entirely appropriate choice.

44. In addition to the advice covering the factors in paragraph 36, trustees will also want to consider the following when assessing a receiving scheme:

- Have the receiving scheme's services to members performed effectively over the past year and do you believe they will continue to perform effectively?
- Do the receiving scheme's legal powers potentially put the members being transferred at a disadvantage?
- Access to withdrawal mechanisms brought about as part of Pension Freedoms.
- The receiving scheme's ability to support RAS (Relief At Source) Tax Relief, especially where the transferring scheme supports RAS, in particular for earners with income below the Personal Tax Allowance.

45. Things which might constitute a significant concern include where:

- the scheme is an authorised master trust which has reported a triggering event which has not been resolved.
- the scheme is in wind up.
- those managing the receiving scheme have been publicly sanctioned by The Pensions Regulator or the Financial Conduct Authority.

46. Additionally, trustees may find it helpful to consult the Pensions Regulator's guidance on how to assess a scheme, which includes a sample template they can adapt to help them carry out an assessment¹³. Trustees will have already been carrying out annual assessments regarding the value for members of the transferring scheme under the Occupational Pension Schemes (Charges and Governance) Regulations 2015. Using the same template will help them to make a meaningful comparison between the two schemes.

47. Bear in mind that some of the information in the suggested list above may need to be sought from the receiving scheme and that they will wish to take whatever

¹³ <http://www.thepensionsregulator.gov.uk/Trustees/checking-you-run-a-quality-dc-scheme.aspx>

measures they deem appropriate to reassure themselves that it is an accurate representation.

48. Trustees should carry out their own assessment of these factors. Whilst they may take account of the receiving scheme's trustees' own assessment of value for members, they should carry out their own due diligence.

Section 4 – charge cap maintenance and extension

49. This section covers the safeguards which have been implemented to ensure members who were protected by the cap on charges do not lose out by being transferred without consent. The relevant regulation is Regulation 4 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879), changes to which were made with effect from 6 April 2018.

Box 3

What do the regulations say?

4(3) The application of this regulation and regulations 5 to 9 in respect of the value of a member's rights is not affected by—

- a) a transfer of those rights from one relevant scheme to another; or
- b) a subsequent transfer of those rights from one arrangement to another within the receiving scheme,

where the member has not given consent to the transfer.

4(4) This Chapter does not apply to a member of a relevant scheme to the extent of the value of that member's rights in an arrangement ("Arrangement A") where—

- a) the value of the rights has been transferred to Arrangement A from an arrangement which is not a default arrangement;
- b) the member has not given consent to the transfer;
- c) before the transfer took place, Arrangement A was not a default arrangement; and
- d) the member has, in the 5 years ending with the date of the transfer, expressed a choice as to where his or her contributions were allocated.

Fund mapping

50. This section covers the charge cap requirements where the trustees 'map' members from the funds in one scheme to those in another scheme (or switch member funds within a single scheme).

51. This is different to fund matching, where trustees ensure they are only moving members to identical funds in the receiving scheme. This practice, sometimes known as 'lift and drop' is generally unnecessary.

52. Members who are protected by the default arrangement charge cap in the transferring scheme must continue to be protected when they are moved to the receiving scheme. This applies whether or not that scheme is used for automatic enrolment. This protection will also remain in place if they are subsequently moved without their express consent between arrangements (fund options) within the receiving scheme.
53. When the members' funds are moved within a scheme or between schemes, our intention under the definition of contribution in the Charges and Governance Regulations is that the transfer payment will itself constitute a contribution.¹⁴ When undertaking the transfer of current workers who are not protected by the cap, the definition of default arrangement means that any arrangement in a scheme used by their employer for automatic enrolment into which these workers are moved without consent will become a default arrangement¹⁵. These workers will therefore be subject to the charge cap¹⁶ unless the five year rule under Regulation 4(4) applies.
54. Regulation 4(4) allows trustees the flexibility to move members into another fund which is not a default fund without triggering the charge cap, provided that the active fund choice was made by the member within five years prior to the date of the transfer.
55. In such cases, trustees are free to exercise their own discretion in selecting an appropriate fund in the receiving scheme. They should base their decision on a consideration of:
- the similarity between the objectives of the receiving scheme's fund options and those of the member's most recent active fund choice
 - the value for money of the receiving arrangement, compared with the transferring arrangement.
56. Trustees should not ignore the option of transferring such members into a default arrangement in the receiving scheme. It is good practice for trustees to notify members in writing of the fund into which they propose to transfer the member at the same time as notifying them of the proposed transfer (see Communications below).
57. Where members made an active choice more than five years before the date of the proposed transfer, trustees do not have the same latitude in law¹⁷. They

¹⁴ <http://www.legislation.gov.uk/uksi/2015/879/regulation/2>

¹⁵ <http://www.legislation.gov.uk/uksi/2005/3378/regulation/2A>

¹⁶ <http://www.legislation.gov.uk/uksi/2015/879/regulation/4>

¹⁷ *Ibid.*

should notify the member of their obligation to move the member into a nominated charge capped arrangement selected on the same considerations as those above. Trustees are free to notify members of other investment arrangements which they believe would be suitable alternatives - but they should make clear which fund the member will be moved into if they do not make an active choice.

58. Where a member was in the default arrangement of the transferring scheme, trustees will generally wish to move the member into an existing default arrangement of the receiving scheme. Where there is more than one default arrangement, trustees should again choose an appropriate arrangement based on consideration of the same two factors.

Section 5 - Good practice

59. This section covers some key aspects of good practice trustees would be advised to consider. It is not a mandatory or prescriptive list. Topics covered:

- Communications with members
- Data quality
- Documentation
- Transition management

Communications with members

60. Where trustees have decided to transfer members without consent, they need to take all reasonable steps to trace non-active members directly. They should consider activities and sources of information such as the DWP's letter-forwarding service and/or alternative tracing agencies, the electoral register, mortality checks, and social media networks.

61. Note that the Preservation Regulations 1991 require that information should be sent to members at least a month before the transfer takes place. This **must** contain information about the proposed transfer and details of the value of the rights to be transferred (including survivor's benefits and death-in-service benefits).

62. Communications sent to members should contain short, clear messages and trustees **should** include the following when drafting their communications:

- a direct line to a nominated person or department at both transferring and receiving schemes for the member to contact;
- any relevant information on the transferring scheme and employer that may help the member to remember their original scheme, subject to data protection requirements and protection against scams;
- details of any period in which members are not permitted to switch investments;
- (where trustees can have reasonable confidence that the member is still resident at that address) member specific information held by the transferring scheme trustees and what actions should be taken to amend/alter this if it is incorrect;

- general information about the receiving scheme;
- whether the individual will become an active or deferred member (depending on employment status);
- the timeline for the transfer.

63. Communications may also contain the rationale for the transfer and a comparison of the funds and options in the transferring and receiving scheme, and details of the options and process should the member wish to opt for a different fund.

Data quality

64. Good quality data will result in faster and more efficient transfers, and as such is a core consideration. We suggest it is good practice for trustees of transferring schemes to make every effort to check that the data they are transferring on their members is up to date and accurate. This could include running a data quality audit prior to carrying out any necessary member tracing/data cleansing and transfer, and a full audit of the transition to ensure all members are mapped across fully and accurately and that the costs incurred are transparent.

65. It would also be helpful to include information that may be vital to the receiving scheme (for example for schemes converting from “net pay” to RAS tax relief systems).

66. To aid this, it might be helpful when writing to members to ask that they verify key data items and report any errors.

Documentation

67. To set out the contractual terms between the trustees of transferring and receiving schemes, the trustees will need to carry out the transfer by means of a transfer agreement. This agreement will normally be required under the trust deed and rules of the transferring scheme. In most cases it will be appropriate for them to ask their legal advisers to draw this up on their behalf.

68. Such agreements will normally include at least the following clauses: receiving/transferring scheme details, definitions, terms of transfer of assets/liabilities, details of the requirements for admission to receiving scheme for active members, agreement as to any future provisions of the receiving scheme, warranties & indemnities, governance regime, signatories, etc.

69. We also expect transfer agreements to include (but not be limited to) the following documents and assurances as applicable, and that the transferring

trustees will warrant to the receiving trustees that the information provided is accurate and complete.

- Confirmation by both sets of trustees as to whether the transfer is to an “Authorised Master Trust”.
- Confirmation that the transferring trustees have a copy of the written advice they obtained and that they have considered it;
- (where the advisers have received, within one year prior to the date the advice was provided, the type of payments listed in Regulation 12(9)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991) Assurance that trustees have a written record of the factors they took into account in determining that the advisers are independent, the weight they attributed to each factor and their reasons.
- Confirmation that the trustees possess a written copy of the written determination by the transferring trustees that the advisers are independent.
- Statement as to whether all contributions will have been reconciled at transfer.
- Confirmation that relevant member communications have taken place, with copies attached.
- Information relating to any members with protected pension ages, or any other protections under tax legislation.
- Information about any members with pension earmarking or pension sharing orders.
- Confirmation that no members subject to transfer have Guaranteed Investment Returns, or Guaranteed Annuity Rates.
- Confirmation, if independent advice is not required because of a current connection between transferring and receiving schemes (as set out in regulation 12(8)), that this connection will be maintained until the transfer is complete.
- Confirmation that data protection rules have been met (e.g. the legal basis used for the transfer of personal data from the transferring scheme to the receiving scheme).
- A statement (where both parties consent) that the transferring scheme trustees have taken legal and investment advice and the transferring scheme trustees believe that they are acting for the proper purposes of the trust (broadly, in the members’ interests) in transferring the members to the receiving scheme.

Transition management

70. When considering a receiving scheme trustees are advised to look into whether there are any relevant one-off costs, such as investment transition costs, as these are fundamental to essential risk management. The Pensions Regulator provides useful information on its website¹⁸. Trustees might also like to consider what asset transition protections are in place.

71. It is worth noting that as explained in DWP's October 2017 consultation¹⁹, we do not intend to offer a statutory discharge for the transferring scheme's trustees where they bulk transfer members without consent.

¹⁸ <http://www.thepensionsregulator.gov.uk/Trustees/investment-management-in-your-dc-scheme.aspx>

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/654893/consultation-the-occupational-pension-schemes-preservation-of-benefits-charges-and-governance-amendment-regulations-2018.pdf

Section 6 - Additional information

Potential tax consequences

72. Trustees should be aware of the potential tax consequences of transfers of members' pension savings.

73. Members will lose protection if the transfer is not a 'block transfer' as set out under Finance Act 2004. Whilst this Guide does not provide definitive guidance on tax matters, the protections members could lose are:

- Where they have protected pension age under the scheme – the right to receive a pension from the scheme before they are 55 (normal minimum pension age), and/or
- Where they have scheme specific lump sum protection – the right to take more than 25% of their pension savings under the scheme as a tax-free lump sum.

74. Guidance on protected pension age and transfers can be found in the Pensions Tax Manual²⁰.

75. The Pensions Tax Manual also contains guidance on transfers and scheme specific lump sum protection²¹.

76. As the loss of these protections caused by a transfer is unlikely to be in members' best interests trustees should take any such risk into account in making a decision to transfer.

77. If the bulk transfer includes the transfer of pensions in payment, extra conditions apply to the transfer. If these conditions are not met, that part of the bulk transfer that relates to the pensions in payment will be taxable.

78. See the Pensions Tax Manual for guidance on the tax conditions for transfer of a pension in payment as:

- 'scheme pension'²²; and
- 'drawdown pension'²³.

²⁰ PTM062240 <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm062240>

²¹ PTM063150 <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063150>

²² PTM107000 <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm107000>

²³ PTM104000 <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm104000>