



Institute  
and Faculty  
of Actuaries

# **Bulk transfers of defined contribution pensions without member consent**

IFoA response to Department for Work and  
Pensions

14 February 2017

## About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

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21 February 2017

Dear Ms Simpkin

**IFoA response to ‘Bulk transfers of defined contribution pensions without member consent’**

1. The Institute and Faculty of Actuaries (IFoA) welcomes DWP’s call for evidence on the rules governing bulk transfers of defined contribution (DC) pensions. As a professional body, we have received a number of queries from our members on the interpretation of ‘broadly no less favourable’, which led the IFoA to publish a note to its members on the actuarial certification of bulk money purchase transfers in February 2016.<sup>1</sup>
2. Members of our Pensions Board, who have experience of bulk DC transfers without member consent, have contributed to the drafting of this response. We anticipate these types of transfers becoming more common and so it is essential that the legislative and regulatory frameworks are fit for purpose. Therefore, we would welcome the opportunity to assist DWP in considering any changes it might make regarding the actuarial certificate.

**Key messages**

3. We suggest that DWP considers removing the legislative requirement for an actuarial certificate in respect of all ‘pure’ DC-to-DC transfers. This would require DWP to define a ‘pure’ DC scheme. The definition of money purchase benefits in the Pension Schemes Act 2011 (s181 PSA 93) would be a useful starting point.
4. However, we strongly recommend that an actuarial certificate continues to be a requirement where an assessment of guarantees or options is needed, or under any other circumstances where the trustees consider that actuarial calculations or judgement may be needed to assess the position.
5. In both of these circumstances, we believe that greater clarity is necessary to enable actuaries, trustees and other suitably qualified DC specialists to interpret ‘broadly no less favourable’. We understand that the interpretation of ‘broadly no less favourable’ differs across the pensions industry. In some situations the ambiguity surrounding the interpretation may make it difficult to effect transfers which, taken as a whole, are unequivocally regarded as in the members’ best interests. Legislative amendments, which reference a specific set of compulsory criteria, could provide clarity and help to resolve this issue by focusing on the key areas of the transfer. These criteria could include a requirement that the transfer will offer value for money and that the nature of the investments and the charges appear reasonable. It is essential that any criteria be considered as a whole and in comparison with the current arrangements. These could either be contained in regulation or guidance.

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<sup>1</sup> IFoA (2016) *Notice: Actuarial Certification of Bulk money purchase transfers* [Available online: <https://www.actuaries.org.uk/documents/notice-actuarial-certification-bulk-money-purchase-transfers>]

6. Additionally, both where an actuarial certificate is and is not required, legislation should re-emphasise the crucial fiduciary duty role played by trustees in evaluating these transfers. It is the duty of the trustees to ensure that, overall, members are in a similar or a better position because of the transfer.

## **Chapter 2: DC-DC bulk transfers**

### **Q1: In your view, how common are occupational DC–DC bulk transfers without consent and can you give examples of circumstances in which they occur?**

7. We see these transfers in a number of situations, for example:
  - a. As a result of M&A activity
  - b. Where an employer wants to separate defined benefit (DB) and DC arrangements that are currently in the same trust
  - c. Where an employer wants to consolidate its existing DC schemes
  - d. Where DC schemes are considering transferring into master trust arrangements
  - e. Where money purchase additional voluntary contributions are transferred as part of a bulk DB transfer without consent
8. We have seen an increase in the number of such transfers and we expect to see further increases. This is owing to a combination of auto enrolment, the pensions freedoms and the increasing focus on DC trustee responsibilities leading many employers and trustees to review whether their current arrangements remain fit for purpose. In some cases, this has led to an increased desire to wind up a current DC trust based scheme (or the DC section of a hybrid scheme) and transfer the existing assets to an alternative arrangement.
9. We anticipate further consolidation under master trusts because of the new authorisation and regulation requirements in the Pensions Schemes Bill 2016-17. This is likely to result in a greater number of bulk transfers without member consent.

### **Q2: Can you give an indication of the time/costs of complying with the current requirements, number of DC-DC bulk transfers per year, time/cost of producing the actuarial certificate, and any other information you think might be helpful?**

10. Time and costs for complying with the current requirements vary on a case-by-case basis. The time and cost becomes greater when work is necessary to help the trustees with the full considerations of the potential transfer, particularly where an actuary would have to be appointed specifically in order to produce the certificate. This can be amplified where there are different sets of advisers involved and they hold different view points on the interpretation of 'broadly no less favourable'.

### **Q3: Do you think there is sufficient clarity regarding what is meant by “broadly no less favourable” and how consistently do you think it is being applied? Some examples of how actuaries actually apply this provision would be helpful.**

11. The term 'broadly no less favourable' was designed for a DB context and as such poses problems for our members working with DC arrangements. We are aware that some actuarial firms have taken a very risk-averse approach to the interpretation of the legislation. This has meant that in some cases actuaries have declined to sign certificates, even where all parties agree that a transfer without consent would be in the best interests of scheme members. Consequently, some schemes have had to find alternative routes, solutions and workarounds, which inevitably add to costs. Such approaches do not work in all cases and do not necessarily result in the best outcomes for scheme members.

12. For example, some of our members and their employers have concluded that to ensure the transfer is 'broadly no less favourable' an actuary should not sign the certificate unless the investment strategy in the new arrangement is the same or very similar to the current arrangement. This can be problematic particularly where the trustees have assessed the existing scheme strategy and decided it is no longer appropriate for scheme members, or that a new strategy (for example, the funds available under a master trust) would be more attractive.
13. Our members could also find themselves in the situation of not being able to certify the transfer if the scheme members' charges were expected to increase after the transfer. In some cases this will be the appropriate position and we fully support the principle that any increases in charges must demonstrate value for money for scheme members. However, when the criteria for a transfer are viewed holistically, a reasonable increase in charges may be viewed as in the members' best interests. For example, if the investment strategy expected to outperform the current investment strategy and thus compensate for any increase in costs.
14. The result of this could be that a transfer to a Trustee Buy Out Plan may need to be agreed as part of a winding-up, even when all parties involved agree that a master trust would be a more beneficial option for members. It also poses a problem where the existing scheme is not going to continue (due to the balance of power resting with the employer). In these cases it is possible that a more appropriate comparison would be against the arrangement that the members would be subject to if the bulk transfer without consent were not to proceed; as opposed to a comparison against the current arrangement (with its associated lower levels of charges).
15. Whilst we would not advocate introducing a system that results in a 'tick box' exercise, if criteria (through either regulation or guidance) that are more specific were introduced, this would provide greater clarity and reduce the need for an actuarial certificate in 'pure' DC-to-DC transfers. We would welcome the opportunity to work with DWP on the form this might take, but have the following initial suggestions for potential criteria:
  - a. The suitability of the investment fund for the population being transferred. This should allow for current pensions legislation and best practice for investment defaults, as well as some flexibility in terms of the 'mapping' of funds.
  - b. A small increase in charges is permitted provided the charges are below the charge cap and are appropriate for the quality of the offering and the investment default.
  - c. The level of member education and engagement. The new arrangement must have appropriate communication to members that clearly outlines their options and the default approach that will be adopted should the member not respond.
  - d. When the above are considered holistically, the transfer should mean that members are in the same or a better position than the current arrangement.
16. The assessment and rationale for these criteria could be evidenced as part of the transfer process. The assessment could adopt a similar approach to the Pension Regulator's 'Value for Members Guidance' and assess the relative importance and strengths of the criteria. Trustees should also assess the level of qualification of the individual who has carried out the assessment, including their ability in, and practical experience of, DC pension matters.

**Q4: Do you think that the actuarial certificate or an alternative check of scheme quality still has a role in occupational DC-DC transfers? If so, who ought to carry out such an assessment? What factors should be considered as part of that assessment and which should be excluded? Do you have any thoughts on how the relative strengths and importance of those factors should be weighed up? If not, how would members continue to be protected?**

17. Where an assessment of guarantees or options is required then we would strongly recommend that an actuarial certificate continues to be a requirement of the transfer. Even where an actuarial certificate is not legally required, we recommend that trustees should have the right to seek one.
18. However, we recommend DWP considers removing the legislative requirement for an actuarial certificate in respect of all 'pure' DC-to-DC transfers. We suggest this should be accompanied by legislation that is relevant to the issues involved, for example, by reference to meeting a specific set of criteria (as noted in our response to Q3), as well as re-emphasising the crucial fiduciary duty role played by trustees in evaluating these transfers. In these instances, we do not consider that legislation should require the involvement of an actuary. However, actuarial advice, along with the involvement of the trustees' legal adviser and an investment specialist (who may or may not be an actuary), could help trustees achieve a better outcome for members.

**Q5: Sometimes occupational DC pensions have valuable guarantees, either borne by the scheme or another body. How do you think the process should differ for these types of scheme?**

19. As stated in our response to Q4, we consider it necessary to maintain the requirement for an actuarial certificate where DC pensions have a guarantee.

**Q6: Do you have any experience of how the scheme relationship condition works in practice? Do you think it serves a useful purpose or does it act as an obstacle in some circumstances? What is the frequency and impact of these obstacles?**

20. The scheme relationship condition arose due to a historical need. This is less relevant for DC schemes where employer covenant is not essential to the scheme being able to meet its accrued benefit obligations. We recommend that this is even less relevant in light of ongoing consolidation within master trusts.

**Q7: What is the impact of the current provisions around bulk transfers for 'orphaned DC schemes', where there are no surviving employers in relation to the scheme? Do you think that we need special provision for such schemes, for example, to allow pension providers to carry out a transfer where certain conditions are met? How do you think this should work in practice?**

21. We agree that some provision should be made that would enable orphaned schemes to be transferred to a master trust. This is likely to have a better outcome for scheme members. This might be by permitting the scheme quality analysis to be made by the provider or the provider's Independent Governance Committee, in the absence of any trustees or employer.

**Q8: Are there any other areas of the occupational DC-DC bulk transfer provisions that you think need simplifying and do you have examples of how they are not working?**

22. It is important that any new approach to these provisions, including any changes to the actuarial certificate, is not viewed as a 'tick box' exercise. It is crucial that trustees understand the certificate is just one component of the evidence on which they should base their decision. Trustees should use their judgement and seek external professional advice as necessary.

23. Should you wish to discuss our response please contact Rebecca Deegan, Policy Manager ([rebecca.deegan@actuaries.org.uk](mailto:rebecca.deegan@actuaries.org.uk) / 02076322125) in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Wilson'.

Colin Wilson  
**President, Institute and Faculty of Actuaries**