



Institute
and Faculty
of Actuaries

GC17/5: Proposed guidance on our approach to the review of Part VII insurance business transfers

IFoA response to Financial Conduct Authority

15 August 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.



Sarah Parrett
Transfers of Business Team
Retail Authorisations Department
Financial Conduct Authority
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London E14 5HS

15 August 2017

Dear Sarah,

IFoA response to GC17/5: Proposed guidance on the FCA's approach to the review of Part VII insurance business transfers

1. The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the FCA's guidance consultation on its approach to the review of Part VII insurance business transfers. Our Life and General Insurance Standards and Consultations Subcommittees and Insurance Boards have been involved in the drafting of this response. Members of the Committees and Boards work for insurers who have been involved in Part VII transfers; some members have also acted as Independent Experts (IEs) in such business transfers.
2. Overall, the proposed guidance is welcome as it sets out and clarifies the FCA's requirements in respect of transfers of insurance business, expanding on SUP 18. In practice, the proposals generally reflect what would be considered good practice currently adopted by firms and Independent Experts (IEs). However, clarifying and formalising the FCA's priorities and areas of concern provides a useful starting checklist for firms and IEs in the design, implementation and review of Schemes of transfer. In particular, examples of the more detailed areas that the FCA will consider and where they have previously raised concerns are useful, as they will help ensure that firms give these due consideration before submitting their proposals. This should promote efficiency and understanding in what can be a long and complicated process.
3. The proposed guidance sets out only the FCA's expectations, although it refers to interaction with the PRA, and in particular the PRA's lead role in a transfer process. In practice, the PRA and the FCA have different regulatory objectives which may lead to potential conflicts and differing requirements. It would therefore be helpful either for both regulators to issue a joint set of requirements, or to set out the areas where there may be different or competing requirements (and in those circumstances, how they would seek to find an appropriate balance).
4. The draft guidance appears to address Part VII transfers under FSMA only. As such, it is unclear if the FCA will apply these standards to friendly society transfers under the Friendly Societies Act 1992. We note that SUP 18 and the PRA's Statement of Policy do cover friendly society transfers, although we acknowledge that it is not necessary for the FCA guidance to do likewise. Some clarification, however, would be useful.
5. We agree that it is important to stress that the IE's report should be readable and understandable by all readers, including those who are not familiar with the business environment and contractual terms. However, the consultation sets out requirements for additional scope and higher standards

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of evidence than might have previously been required within the IE reports. Additional scope/ evidence mentioned includes:

- the impact on competition;
- the merits of alternative designs, and contingency plans/ additional proposals should risks materialise;
- more description of the detailed analysis/review process;
- more demonstration of independent challenge; and
- analysis of operational arrangements and appropriateness of governance post-transfer.

As a result, we believe there is potential for IE reports to be more detailed and technical than in the past, with a corresponding impact on costs. However, the additional technicality may be managed to some extent by a more user-friendly policyholder summary of the Scheme report.

6. The guidance consultation acknowledges that low fee caps for advisors and the IE will cause concern that the quality of the work might be compromised. Conversely, it also notes that higher standards and additional scope may be required of the firm and its advisors. We note that the cost-benefit analysis states that IE fees are typically between £35,000 and £200,000, which includes the costs of re-work due to rejection of documents that do not satisfy the FCA's approach. This estimate may be appropriate for transfers that are more straightforward/ simple, but the fees do vary very widely; we are aware of more complex transactions where fees have been much higher. Some areas of additional scope, such as the review of more underlying information rather than the summaries provided by firms, or the impact on competition, may also result in significant additional work. Setting out the range of fees quoted may create an expectation among firms commissioning these reports; it may apply commercial pressure on the IEs to keep to this range of fees, even where this may not be appropriate for the transfers in question.
7. In addition, firms need a reasonable expectation in order to manage their budgets appropriately. The low estimates and suggestion of a potential £50,000 reduction in fees may not be realistic and may apply pressure on the IE and other advisors to restrict the extent of the work to keep to this.
8. The consultation acknowledges that IEs may need to rely on the work of other experts, particularly for legal and tax advice. The IE needs to take reasonable steps to ensure that they can rely on the advice provided, and where necessary, obtain separate independent advice. Indeed, the consultation suggests that IEs will need to justify why they did not need to obtain their own independent advice. Given the challenge that is likely to ensue as implied by this consultation, it may result in IEs commissioning independent advice by default. This may add considerable cost to transfer exercises, particularly if they are small and simple in nature. It would therefore be helpful if the FCA could include some guidance on when IEs could dispense with separate independent advice.
9. The FCA states that it 'may challenge IEs who rely on the Applicants' legal advice and merely state that they have no reason to doubt the advice and/or that it is consistent with their understanding of the position or experience of similar business transfers'. Provided the IE has taken appropriate steps to satisfy themselves that the advice can be relied on, it is unclear on what basis the FCA would further challenge that reliance on advice. It would therefore also be helpful if the FCA could set out what separate assurances and review an IE can place on an Applicant's legal advice before they can rely on it.
10. The draft guidance implies that there should be a two month limit on changes to the effective date of transfers; any delays of more than this would likely require re-notification of policyholders.

Policyholder communication can be an expensive exercise and as such, re-notification should be required only where there is deemed to be material change and not due to arbitrary time limits.

11. One of the selection criteria that the FCA will consider in respect of the selection of IEs is their performance on previous Part VII transfers. It is unclear to us what entails good or bad performance: this is potentially subjective and arbitrarily judged. In addition, we understand it is unusual in current practice for the FCA (or the PRA) to provide IEs with feedback in respect of their performance. As such, this will mean that potential IEs may be judged on criteria that they are not aware of. We would suggest that the criteria for 'good performance' are clarified and made more transparent. Constructive bi-directional post-transfer feedback would be a helpful process to bring clarity to what entails good performance. We would also note that the IE's performance is to some degree dependent on the quality and timeliness of the information they receive.
12. The consultation also implies that applicants and advisers should communicate simultaneously with both the PRA and FCA, or in some cases, communicate first with the FCA. However, this appears to be out of line with SUP 18.2.13 G and Clause 2.12 of the PRA's Statement of Policy; these indicate that firms should first approach the PRA, but should also consider whether any aspects of their proposals should be discussed with the FCA. Greater clarity on the protocols that firms should adhere to would be helpful to ensure that processes are as efficient as possible.
13. One aspect of the Part VII process that can be very important when such transfers take place between non-related companies is the role of external lawyers in managing the whole process. An experienced legal advisor, planning the process from the outset, will contribute materially to the efficiency of the process, and it might be appropriate to mention the importance of the legal advisors to Part VII processes.

Should you want to discuss any of the points raised please contact Steven Graham, Technical Policy Manager at Steven.Graham@actuaries.org.uk or on 020 7632 2146 in the first instance.

Yours sincerely,



Marjorie Ngwenya
President, Institute and Faculty of Actuaries