



## FCA GC21/3: Proposed changes to guidance on the FCA's approach to the review of Part VII insurance business transfers

### IFoA Response

The Institute and Faculty of Actuaries (IFoA) is a royal chartered, not-for-profit, professional body. We represent and regulate over 32,000 actuaries worldwide, and oversee their education at all stages of qualification and development throughout their careers.

#### Key points

The Institute and Faculty of Actuaries welcomes the opportunity to respond to the FCA's Guidance Consultation paper GC21/3 on Part VII transfers. From a high-level-perspective, we believe the proposed revisions to the guidance are reasonable, and provide useful points of clarification on the FCA's needs in relation to assessing Part VII transfers. We recognise the importance of assessing a potential Part VII transfer from a conduct risk as well as from a prudential risk perspective.

The revised guidance notes that the FCA have an active role in the Part VII Transfer process, and can object to a scheme based on conduct concerns, even if there is no prudential concern. Whilst we can understand the rationale for this addition (and believe it is in the public interest to include it), we are unclear on whether it clarifies the status quo, or is an additional proposed FCA power in relation to Part VII transfers.

The guidance also clarifies that changes to Part VII Transfer timetables now require consent before changing these dates. Although this is not unreasonable, it could create further time pressure in what can often already be a fairly time-pressured process.

The guidance includes the following addition (in bold) in terms of areas the Applicant and Independent Expert should consider:

....sufficiently analysed how, and to what extent, there may be an adverse **or positive** impact on Policyholders.

In our experience, the focus of Independent Expert assessment of Part VII transfers tends to consider whether policyholders are materially adversely affected, rather than considering whether a scheme is a 'net positive' for the transferring policyholders. We are therefore unclear on whether this addition is appropriate.

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1. The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the FCA's Guidance Consultation paper (GC) 21/3 *Proposed changes to guidance on the FCA's approach to the review of Part VII insurance business transfers*. In developing our response, we have drawn upon input from a range of members working in both life and general insurance, including members with relevant experience of Part VII transfers both as independent experts and supporting such transfers.
2. It is important to note that, as for any IFoA response, we have considered the FCA's proposals from an independent, public interest perspective.
3. In our response, we have focussed on the proposed deletions/ additions to the relevant existing FCA guidance, and our comments relate to the relevant paragraphs in the 'tracked changes' revised guidance.
4. From a high-level-perspective we believe the proposed revisions to the guidance are reasonable. They provide useful points of clarification on the FCA's needs in relation to assessing Part VII transfers from a conduct point of view. We also recognise the importance of assessing a potential Part VII transfer from a conduct risk as well as from a prudential risk perspective. The clarifications to the FCA's guidance should hopefully help make the transfer assessment process more efficient for all affected parties.
5. Paragraph 1.1 of the revised guidance includes an important addition as follows, with the addition in (our) italics:  
  

However, we also have an active role in the process *and can object to a scheme based on conduct concerns, even if there is no prudential concern.*
6. Whilst we can understand the rationale for this addition (and believe it is in the public interest to include it), we are unclear on whether it clarifies the status quo, or is an additional proposed FCA power in relation to Part VII transfers. If it is an additional power, it may be helpful to clarify this in the relevant FCA Policy Statement post-consultation, if it is planned to publish this.
7. Paragraphs 2.4 and 2.6 clarify that changes to Part VII transfer timetables now require consent before changing these dates. This is not unreasonable, but could create further time pressure in what can often already be a fairly time-pressured process.
8. In addition, we interpret paragraph 2.6 to suggest that the FCA could provide comments up to immediately before hearings or publication of the supplementary report. It would be helpful to allow for a reasonable minimum amount of time for the Applicants/ Independent Expert to implement changes.
9. Paragraph 3.2 states that if an Independent Expert is working on two interacting schemes simultaneously, they must demonstrate independence prior to approval. We agree this requirement is appropriate. However, we note that the last bullet point is phrased as a question, which may be confusing. Furthermore, the example referred to relates only to a compromise in terms of resource; it would be more helpful to include/ refer to a broader definition of independence.
10. In our view, it may be useful to give practical caveats around the expectations set out in paragraph 4.2 - i.e. to submit near-final documents for review. For the most part, we agree with this request, but we note that in some cases it may not be possible to finalise all details before drafts are shared with the regulators, especially given the proposed 6-8 week review period. In such cases our experience suggests that clear communication of these points which are not yet finalised and how these items will be resolved in the process should still mean that the documents can be usefully submitted for regulatory review.

11. Paragraph 4.5 includes a reference to FG21/xx. We were unclear on what this reference related to; for example does it relate to separate as-yet unpublished guidance?
12. Paragraph 4.16 includes a notable addition to the text as follows, with the addition in (our) italics:
 

....sufficiently analysed how, and to what extent, there may be an adverse *or positive* impact on Policyholders.
13. In our experience, the focus of Independent Expert assessment of Part VII transfers tends to consider whether policyholders are materially adversely affected, rather than considering whether a scheme is a 'net positive' for the transferring policyholders. We are therefore unclear on whether this addition is appropriate.
14. Paragraph 4.18 requires all contact centre staff to be appropriately trained. However, the requirement for all such staff to be trained may be overly onerous, and we suggest it would be preferable to require that sufficient adequately trained staff are available to deal with objections and queries.
15. Paragraph 5.4 includes some wording which we found confusing (in italics):
 

*...other conduct in relation to their insurance business that may liability*
16. Does this mean 'that may create a liability'? In any case, we believe the wording should be clearer.
17. Paragraph 6.4 sets out examples of the FCA's considerations when reviewing the Independent Expert's report. We note the proposed deletion of the following example:
  - sufficient comparative regulatory framework analysis
18. As transfers from the EEA to the UK are still possible, albeit now potentially requiring the EEA firm to have a UK branch, a comparison could still have value to transferring policyholders.
19. Finally, we had a number of minor observations:
  - we note that paragraph 3.6 suggests that providing the FCA with details for all shortlisted candidates would make the Independent Expert nomination review process easier. We are not convinced this additional information would add much value/ increase the efficiency of the review process;
  - there are a couple of small typos in paragraph 4.19:
    - 'Policyholder' is not capitalised;
    - there is an additional space before the apostrophe;
  - we suspect there may be a glitch with the numbering of the cross-reference in paragraph 5.11, which refers to the FCA's contact details. We presume this should become paragraph 1.13, once the proposed additions and deletions are allowed for.

Should you want to discuss any of the points raised please contact me, Technical Policy Manager (steven.graham@actuaries.org.uk) in the first instance.

Yours Sincerely,

A handwritten signature in black ink that reads "Steven Graham". The signature is written in a cursive style with a small flourish at the end.

Steven Graham  
**On behalf of Institute and Faculty of Actuaries**