

## Helping you navigate the storm

Facilitating financial advice for DB scheme members considering transferring out





*"Deciding whether to transfer out of a DB scheme is one of the most complex financial decisions a consumer may have to make and it is vital customers get high quality advice."*

**Megan Butler, Executive Director of Supervision, FCA (June 2019)**

In December 2019, we co-published a policy paper with Royal London, Should I stay or should I go?, looking at the question of whether (and if so, how) trustees and scheme sponsors should help DB scheme members with financial advice on transfers out. It generated debate in the press and around trustee board meeting tables at the time and there have been developments since then.

A number of factors mean that this is now an even more critical issue for trustees and members than it was a year ago. It is worth revisiting this important topic in light of those factors.



*"We have a system which allows, and sometimes now demands, that individuals take potentially very difficult and risky decisions about their savings. [S]kimmers and scammers often operate in the grey areas around the boundary of regulation and protection ... we must all work together to make their lives as difficult as possible."*

**Charles Randell, Chair of the FCA (September 2019)**

## Recent developments - a gathering storm

There are some concerning trends in DB pension transfers at the moment, including:

**1. Increasing DB transfer requests:** for some clients we are already seeing, and we expect to continue to witness across the industry, a material rise in DB transfer requests. This is for a number of reasons, including:

- covid-related market volatility/employers' financial challenges which may be perceived by members (often wrongly) as a risk to their DB benefits
- as the government's job support measures taper off and redundancy levels rise, hard-up over 55s with DB benefits (or those with loved ones in financial difficulty) are also more likely to seek a transfer to a DC scheme in order to free up cash
- the prevalence of scammers (see below)

**2. Fewer financial advisers/related increases in advice cost:** at the same, time there is increasing pressure on financial advisers. This includes regulatory changes such as the FCA's ban on contingent charging for DB transfer financial advice (other than in very limited circumstances) and the growing cost of professional indemnity insurance cover.

While the FCA changes are intended to improve the quality of advice over time, they are also likely to lead to further contraction in the numbers of advisers offering DB transfer advice and an increase in cost for members. In addition, those without very significant transfer values (at least six figures) may find that many advisers will not

even accept their business. The September 2020 [paper](#) from LCP and Royal London looks in more detail at the changes in the IFA market and calls on schemes to do more to help scheme members.

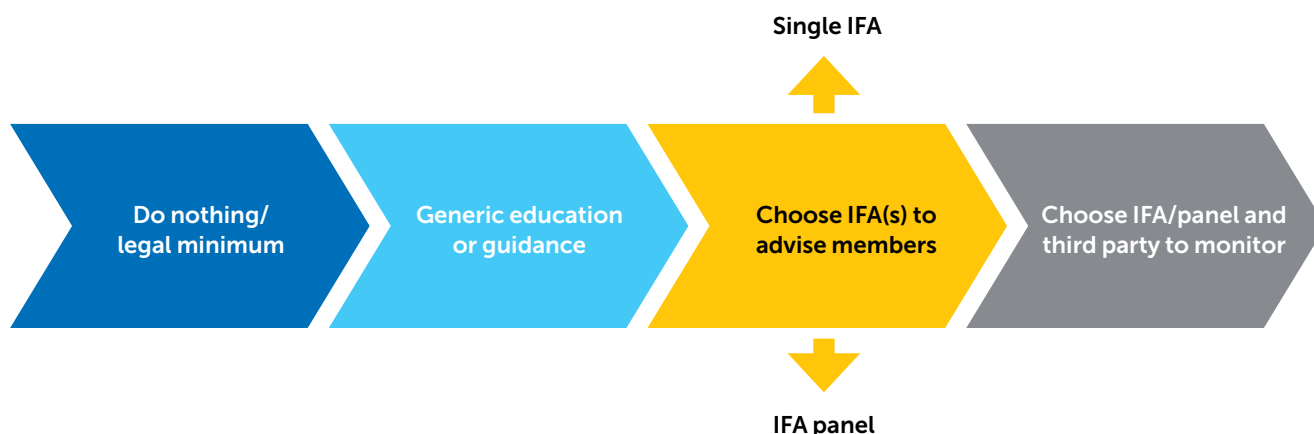
**3. Increasing scams activity:** unsurprisingly, reports suggest that there has been an upturn in scammers trying to take advantage of members' vulnerability during the coronavirus crisis. XPS Transfer Watch reported in October 2020 that over 60% of transfers covered by its service showed a warning sign of a potential scam. In June 2016, that figure was only 13%. To help counter scams, the government is considering new measures under the Pension Schemes Bill. However, previous interventions, such as the ban on pensions cold calling, while well-intentioned, appear to have led determined scammers to change their tactics rather than curtail their activities.

Among our trustee clients, we are seeing a significant increase in queries and complaints to DB schemes about previous transfers out. Often these are instigated on a bulk basis by claims management companies whose work dropped off after the PPI claims deadline passed. In some cases (due, for example, to their charging structure) this is seen by some as 'secondary scamming'.

Against this background, we believe that now is a critical time for trustees and scheme sponsors to think about supporting members with what could be one of the most complicated and important financial decisions they ever make.



## How can trustees and employers help members?



As shown in the graphic, there is a range of options here, from doing nothing or just offering generic pensions education to, at the other end, vetting and selecting a panel of IFAs and appointing a third party to monitor the quality of advice. There is more information on these options in our [policy paper](#).

We have worked on projects for a number of our clients who have embraced the idea of facilitating quality financial advice for their members within a well governed framework – and we are seeing interest in this area increase.

### Pros and cons

As things stand, trustees and scheme sponsors are under no legal obligation to help members source financial advice. However, as we explain below, doing nothing is not ‘risk free’ for trustees and sponsors. So it is important that they weigh up the pros and cons of getting involved in this area and take a conscious decision whether to do so.

#### Why do some trustees/sponsors decide not to get involved?

Some trustees and sponsors hesitate to get involved in recommending, paying for or otherwise facilitating financial advice if they do not have to. They worry about going beyond their legal role, extending their duty of care as trustees and perhaps inadvertently straying into FCA-regulated activities without FCA authorisation. And they fear assuming liability for advice given.

Cost may also be a concern – sourcing, paying for or contributing towards good IFA advice will not come cheap.

#### Why are trustees/sponsors increasingly deciding to get involved?

First, and critically, it is important to understand that there is no risk free option for trustees and sponsors. The British

Steel saga demonstrated that doing nothing to help members with DB transfers is far from risk free, and can actually entail significant reputational damage. So trustees and sponsors are in a balance of risk situation, and must weigh up the relative risks on both sides, taking account of all relevant factors in doing so. **Our view is that trustees and sponsors who facilitate independent financial advice for members within a proper governance framework are actually likely to be exposed to less risk than those who do nothing at all.**

Second, trustees and sponsors may consider that the right thing to do is to help members with what could be a life-changing decision in the context of what the former Chief Executive of the FSCS, Mark Neale, described as an industry “characterised by a bewildering array of products, by complexity ... and by profound information asymmetry.”

Third, members are likely to get better quality advice and better financial outcomes from IFAs identified by trustees who have carried out proper due diligence. The advice itself is also likely to be less costly due to economies of scale (for example, “bulk buy” discounts and IFAs being familiar with the scheme rules/benefit structure, saving significant time on each client).

Fourth, having dedicated IFAs in place will help trustees to comply with the new additional transfer out due diligence likely to form part of the Pension Schemes Act. It could also be what the DWP’s October 2020 DC “nudge” guidance and forthcoming legislation ultimately leads to: this refers to requiring trustees “to take proactive steps to facilitate appointments for their members and to present taking guidance as a natural part of the process of accessing pension savings”. (This is currently expected to involve a referral to the Money and Pensions Service, but IFAs would be a logical next step.)





*"Despite our previous interventions, both with individual firms and across the sector, we think the risk of harm from unsuitable advice remains unacceptably high."*

**FCA policy statement on pension transfer advice (June 2020)**

*"Some employers or trustees may want to arrange access to advice through a named FCA authorised firm. This option is available to employers or trustees providing they take appropriate care not to undertake ... regulated activities."*

**FCA policy consultation GC20/1: Advising on pension transfers (June 2020)**

## Some project design pointers

We have worked on various projects for trustees who have decided proactively to source financial advice for members, in co-operation with scheme sponsors. Listed below are some of the points which have been critical to the success of those projects.

- ✓ Always be mindful not to promote a particular option or stray inadvertently into carrying out an FCA regulated activity. This is a criminal offence without FCA authorisation (which trustees generally don't have). This hurdle can be navigated but it needs care. The FCA's June 2020 [consultation on pension transfer advice](#) specifically suggests that legal advice should be sought on this issue.
- ✓ Facilitate access only to independent advisers offering "whole of market" advice. This is for reputational reasons but also to ensure FCA compliance.
- ✓ If any costs are to be met from scheme assets rather than by the employer, ensure that those payments are both:
  - permitted under the rules
  - "authorised" payments for tax purposes,and that the trustees are comfortable that they are acting for a proper purpose.
- ✓ Carry out (and be able to demonstrate) appropriate initial due diligence and ongoing monitoring on the IFAs involved – what is good on day one doesn't necessarily stay good forever.
- ✓ Communicate carefully with the membership – it should be very clear that the trustees and employer are just facilitating advice, not recommending a course of action and not responsible for the IFA's advice.
- ✓ Contracts with the IFAs and any third party monitor will need to be put in place. These need to dovetail properly and there are a number of specific points – including GDPR – that will need to be addressed to protect the trustees and sponsor. No two IFAs' terms are alike and it is important to address key contractual terms at the due diligence stage before selecting an IFA.

## What happens next?

As we say above, trustees and sponsors are in a balance of risk situation in deciding whether to facilitate financial advice for scheme members. Although the market is moving in favour of taking action, there is still no automatic right answer for all situations. The right answer for each scheme will depend on the factors in play. This means that, as a minimum, trustees should be putting the issue on the trustee meeting agenda, and audit trailing that they have considered it properly.

**December 2020**

**If you are interested in knowing more, please contact:**



**François Barker**

*Partner and Head of Pensions*

M: +44 782 534 1131

[francoisbarker@eversheds-sutherland.com](mailto:francoisbarker@eversheds-sutherland.com)



**Charlotte Cartwright**

*Legal Director*

M: +44 777 063 5326

[charlottecwright@eversheds-sutherland.com](mailto:charlottecwright@eversheds-sutherland.com)



**Andy Wright**

*Principal Associate*

M: +44 776 916 3469

[andywright@eversheds-sutherland.com](mailto:andywright@eversheds-sutherland.com)

**Click to listen to our 13 minute  
"Barker's Dozen" podcast  
exploring financial advice and  
supporting members to a safer,  
better retirement.**



**@ESpensionlaw**



**Eversheds Sutherland International Employment and Pensions Updates**

**[eversheds-sutherland.com](http://eversheds-sutherland.com)**

© Eversheds Sutherland 2020. All rights reserved.  
Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP  
are part of a global legal practice, operating through various separate and  
distinct legal entities, under Eversheds Sutherland. For a full description of  
the structure and a list of offices, please visit [www.eversheds-sutherland.com](http://www.eversheds-sutherland.com)  
DTUK003528\_11/20