In Touch technical update

May 2018

New process for DC bulk transfers without member consent

- Actuarial certification is no longer required if there are no promises or guarantees
- Instead, trustees are to rely on their fiduciary duty to consider taking appropriate advice, and in some cases, this will be a statutory requirement
- The DWP has published high-level guidance intended to assist trustees through the process

Since 6 April 2018 there have been new rules intended to simplify bulk transfers without member consent for those defined contribution (DC) rights that do not include underlying promises or guarantees. The expectation is that this will help drive consolidation of DC arrangements and encourage a shift towards membership of larger schemes, which are typically able to provide better governance alongside lower charges.

The DWP has now published guidance to help trustees comply with the new regulations, covering matters such as choosing an appropriate adviser, charge cap maintenance and other good practice considerations.

New simplified process

From 6 April 2018, it is possible to make a bulk transfer of pure DC benefits (i.e. with no underlying promises or guarantees) from one trust-based scheme to another, without obtaining member consent and with no requirement to obtain an actuarial certificate. Instead, trustees can seek advice as they deem necessary in order to satisfy their fiduciary duties; and in some cases, trustees will be required by law to consult with an appropriate adviser, who is independent from the receiving scheme.

Prior to this, it was necessary for an actuary to certify that members' benefits under the receiving scheme would be broadly 'no less favourable than those under the transferring scheme' and for there to be a relationship between the employers of the two schemes. The provisions were originally drafted for a defined benefit landscape, and as such made a comparison of benefits less meaningful in a DC context.

Actuarial certification

The option to use the actuarial certification process for pure DC transfers will be removed from 1 October 2019, so schemes have almost 18 months to complete any such transfers that are currently underway or to use this route if there are particular reasons for doing so.

Actuarial certification will remain a requirement for transfers without member consent where there are guarantees (often found in with-profits arrangements).

Independent advice

In some cases it will be a legal requirement for trustees to obtain and consider the written advice of an appropriate adviser who is independent of the receiving scheme. This advice needs to be sought up to a year before the transfer takes place.

For these purposes, an appropriate adviser is, "a person whom [the trustees] 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”.

Where independence is required, the trustees must consider whether, in the year up to the date the advice is provided, the adviser received payment for providing advisory, administration, or investment services to the receiving scheme. This payment could be from the scheme itself, its employer, or a provider of such services to the scheme.

There is no statutory requirement to obtain advice if the two sponsoring employers are connected, or if the transfer is to an authorised master trust. In such cases, trustees may rely on their own judgement.

Charge cap protection

Members protected by the default fund charge cap protection (currently 0.75% pa) will retain that protection in the receiving scheme. There is also an extension to the charge cap protection in relation to members who self-selected their funds more than five years before the date of the transfer. In this instance the new funds that the member is transitioned to, whether the default or self-select funds, will need to comply with the current charge cap.

The DWP considers the charge cap to be a reasonable minimum requirement for a receiving DC scheme, where the transfer takes place without member consent. It is also intended to maintain member confidence as the level of charges is a generally visible and comparable quality factor.

Transfer to master trust

If the transfer is to an authorised master trust, under the new regime that will apply from October 2018, there is no statutory requirement to consult with an independent adviser. Trustees can rely on the master trust authorisation as an indication that the scheme meets certain minimum standards and that there are extra protections in the event of wind up. However, there will be additional aspects of scheme design that trustees will need to consider in order to satisfy their fiduciary duty. The DWP expectation is that advice would usually be taken in this instance, although it is not required by the regulations.

DWP guidance

The DWP's guidance is intended to help trustees with decisions on whether or not a transfer without consent is in the best interests of their members. It is designed to be used alongside the Pensions Regulator's DC Code and associated guidance.

In particular, the guidance sets out some general principles, including the following which emphasises the importance of assessing value for members:

- 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.

- 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.

The guidance includes further information on what is meant by an appropriate adviser and how trustees should determine independence, where this is a requirement. It also considers what the advice might cover, noting that there is no legislative requirement for the advice to include a recommendation on whether or not to transfer members. Trustees are encouraged to consider a number of good practice areas, such as communications with members, data quality and transition management.

Actions for schemes

Trustees and employers considering consolidation of any DC benefits within their schemes or changing their DC arrangement should speak to their advisers to consider the likely feasibility and the potential benefits in terms of improving member outcomes.