

# Banning member-borne commission in occupational pension schemes

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## Introduction

On 26 January 2016, the DWP published its [response](#) to the consultation, “[Better workplace pensions: Banning member-borne commission in occupational pension schemes](#)”. The response includes a further consultation on the draft regulations that will put the ban in place.

## Key points

- With effect from 6 April 2016, service providers will be prevented from levying a charge on members to recover the cost of any commission payments to advisers for certain advice or services in respect of any new commission arrangements, or variations or renewals of existing commission arrangements.
- The Government intends to consult later in 2016 on regulations in respect of existing commission arrangements (those in place before 6 April 2016).
- TPR will regulate compliance with the ban and “take enforcement action where it considers it appropriate on a proportionate and risk based approach”.

## Background

### Commission arrangements

In occupational pension schemes, commission typically relates to advice or services that have been agreed between a service provider and an adviser. The service provider remunerates the adviser and recovers this cost through member-borne charges. Commission may take the form of an up-front payment known as “initial commission” or an ongoing payment, commonly referred to as “trail commission”.

### Proposals

In March 2014, the Government announced that it intended to prohibit, with effect from April 2016, member-borne commission payments to an adviser in occupational pension schemes that provide money purchase benefits and are being used by an employer as a qualifying scheme for automatic enrolment in relation to at least one jobholder (“Relevant Schemes”). A consultation, published in October 2015, sought views on the

most effective way to implement such a ban.

The Government considered two options:

- Option A – placing a duty on trustees or managers to ensure that members are not charged to recover the costs of commission payments to advisers in relation to any new commission arrangements, and to use their best endeavours to remove any such existing member-borne commission arrangements in these schemes
- Option B – placing a duty on service providers to prevent members being charged to recover the costs of commission payments to advisers in relation to any new commission arrangements, and to remove any such existing member-borne commission arrangements in these schemes.

## Duty on service providers

In the Government's opinion, service providers are best placed to prevent and remove charges on members to recover commission. It has therefore decided to implement Option B.

Regulations will be introduced which will prevent service providers (persons who provide an administration service directly to a scheme's trustees or managers) from levying a charge on members (active or deferred) of Relevant Schemes in order to recover the costs of commission payments made to advisers for certain advice or services. The ban will also apply to AVCs where these are used to provide money purchase benefits in Relevant Schemes.

Once a scheme is covered by the ban it will remain so, even if it stops being used for auto-enrolment. This aims to ensure that, once a member is protected by the ban, they will remain so and is consistent with the approach taken with the default fund charge cap (see our [Alert](#)).

## Staged approach

The regulations that come into force on 6 April 2016 will not apply to commission arrangements entered into before this date. If, however, these arrangements are varied or renewed on or after 6 April 2016 then they will be caught.

The Government intends to consult later in 2016 on regulations in respect of existing commission arrangements.

## How will the ban work?

Trustees will be required to inform the service provider whether the scheme is being used as a qualifying scheme for auto-enrolment, by the later of:

- three months of the regulations coming into force
- the date the scheme is used as a qualifying scheme (the response refers to "the employer's staging date", although the regulations seem to be drafted more broadly); or
- the date the service provider is appointed to the scheme.

Trustees will be responsible for confirming, on the scheme return, whether or not the service provider has confirmed to them that they have complied with their regulatory duty.

It will still be possible for members to opt-in to advice and services provided to them, subject to certain conditions. For example, any such agreement must be set out in writing, including the cost of the advice or service and the duration over which the payment will be taken.

The service provider will have one month from the date it receives this notification to comply with the ban. Once the ban applies, the service provider has a further month to confirm its compliance to the trustees in writing. If its confirmation ceases to be accurate, the provider must notify the trustees as soon as practicable and, at the latest, within one month.

## Contract-based schemes

The FCA consulted in 2014 on rules to ban existing commission arrangements that were not prohibited by the Retail Distribution Review. Their [final rules](#) were published on 2 March 2015 and will come into force in April 2016.

## Next steps

The consultation closes on 9 February 2016.