Call for evidence - Bulk transfers of DC pensions without member consent

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Introduction

On 20 December 2016, the DWP published a call for evidence seeking views on how the current provisions on the bulk transfer of DC pensions without member consent, in particular from occupational and stakeholder pension schemes, could be improved.

Key points

- The DWP aims to ensure that the current bulk transfer legislation, which was designed with DB pension provision in mind, can work effectively for DC arrangements.
- The DWP notes that the call for evidence provides an "opportunity to revisit a potential barrier to allowing scale to develop in the DC landscape", by making it easier for small DC schemes (which tend to have weaker governance) to exit the market or consolidate without the need for specific legislation.
- The call for evidence does not address changes to the requirements needed for bulk transfers of DB pensions without consent.

Background

Automatic enrolment has resulted in a big increase in the number of pension savers, making it important for the Government to:

- reduce the burden on pension schemes whenever possible
- ensure that legislation remains fit for purpose
- ensure that scheme members are adequately protected.

The Government is therefore keen to make the bulk transfer provisions workable for DC arrangements.

DC – DC bulk transfers

Under current legislation, a scheme may undertake a bulk transfer without consent provided the following conditions (which are intended to ensure member protection) are met:

- an actuary must certify that each member's rights in the receiving scheme will be "broadly, no less favourable" than the rights to be transferred ("the scheme quality condition")
- the transferring and receiving schemes both relate to persons who are or have been in employment with the same employers; or the transferring and receiving schemes relate to persons in employment with different employers and the transfer is either a consequence of a financial transaction between the employers or the employers are related for the purposes of the legislation ("the scheme relationship condition").

Employers will be related for the purposes of the legislation where, for example, they are part of the same corporate group.

Schemes often take advantage of the bulk transfer provisions where, for example, a company wishes to consolidate its pension arrangements or to transfer its employees to a master trust. In such cases, seeking consent from the entire membership will often be very difficult, particularly in relation to deferred members.

The scheme quality condition

Originally, the scheme quality condition was intended to ensure that, on a transfer without consent, a DB member would secure a broadly similar or enhanced entitlement to a future salary-related income.

The DWP accepts that this condition may not be suitable for DC schemes. However, it is not convinced that replacing the actuarial certificate with, for example, a reliance on trustees' fiduciary duties alone, would offer adequate clarity for trustees or member protection. Consequently, it would "prefer to focus on solutions which simplify or standardise the current actuarial arrangements, provide a legislative solution, or offer a feasible alternative mechanism".

The scheme relationship condition

Again, the purpose of this condition has its origin in the traditional, predominantly single-employer, pensions landscape, in which it would be expected that transfers without member consent would take place only where there was some kind of underlying relationship between the employers using the schemes.

While initial engagement indicates fewer concerns with this condition, the DWP notes that it could act as a barrier to the efficient consolidation of small pots in occupational pension schemes and also causes potential difficulties for schemes that have been "orphaned" (by which the DWP means the only employer ever to have participated has been dissolved and there is no trustee).

The DWP is therefore considering whether, in at least some circumstances, to allow for an exemption from the scheme relationship condition so that members can be transferred to a well-governed scheme and the original scheme can be wound up in an orderly way.

Bulk transfers from stakeholder schemes

Currently, a bulk transfer can be made without consent from a stakeholder scheme, provided that:

- the receiving scheme is also a stakeholder scheme
- the transferring scheme has commenced wind-up
- the transfer payment is of an amount at least equal to the statutory cash equivalent of members' rights under the transferring scheme.

The DWP recognises that the pensions landscape has evolved and it is appropriate to consider how these provisions can be updated, for example, to allow transfers to other types of scheme. As FCA regulatory principles would apply and would broadly protect members from a worse outcome than if they had not been transferred, additional safeguards may not be required.

The DWP will also consider whether to remove the requirement for the transferring stakeholder scheme to have begun winding-up before a transfer without consent can take place.

Next steps

The call for evidence closes on 21 February 2017. The information and views gathered will be used to inform a consultation and more industry engagement on "firmed up" policy proposals during 2017. Should secondary legislation be required, the DWP "aspires" for it to be in place by April 2018.

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