

Guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation

March 2021

Guide for employers and trustees

Introduction

As an employer or pension trustee, you might want to help your employees with financial matters. However, you may have concerns about what you are allowed to do without needing to be authorised by the Financial Conduct Authority (FCA).

Some financial activities require FCA authorisation. In this document, we give you information on the things you can do without needing to be authorised by the FCA. We also try to help you understand actions which could trigger a requirement for authorisation if you took them. For example, if you try to help scheme members towards certain FCA-regulated products or help them make decisions on their pension in a way that would likely be considered, under legal definitions, as providing financial advice.

It does not give a complete summary of all the relevant legislation, but we have signposted other resources that might help you further.

In this guidance, we generally refer to 'employers and trustees' as 'you'.

Authorisation

Where you are thinking about helping employees with their workplace pension scheme, wider retirement planning, or other aspects of their financial affairs, you will generally not need to be authorised by the FCA.

You will only need FCA authorisation if you are in the business of arranging transactions or providing regulated advice and if you receive a 'commercial benefit' for helping employees. A 'commercial benefit' could take several forms but the most obvious would be where the firm that provides a financial product offers the employer commission or a reduction in their commercial insurance premiums. Where a firm's pension and benefits package results in a more motivated or productive workforce we would not view this as a commercial benefit that would trigger the requirement for your firm to be FCA authorised.

Employers and trustees are not generally in the business of arranging transactions or giving regulated advice and do not normally receive any commercial benefit for giving employees information or helping them with pensions or other financial matters. So in most cases you should be able to help staff without needing to be authorised. We think the best way to ensure you would not be considered to be in the business of arranging transactions or providing regulated advice is to focus on offering help to employees in ways which do not involve arranging or advising. This guide is intended to assist you to provide help without arranging or advising.

Communicating information about pensions

The most likely area where employees may ask you for help is, of course, with decisions on pensions related to their employment with you.

You can offer help but there are also some limitations: you cannot issue material that promotes a particular financial product. If you do, you risk making a 'financial promotion'. Only someone authorised by the FCA or approved by an authorised firm can issue a financial promotion. This includes promotional material in any format.

However, there are some exemptions to the Financial Promotion Order which may allow an employer to promote a pension scheme offered in the workplace.

You can give information on the merits of participating in an occupational pension scheme, as long as that scheme is not a stakeholder pension scheme or a group personal pension scheme. Information on your occupational pension scheme does not come under the restrictions on promoting financial products. This is because, in an occupational pension scheme, the employees are not making investments, as the trustees are acting on their behalf. You can also give employees factual information on a stakeholder or group personal pension scheme, as explained below.

What counts as a financial promotion?

Although you are restricted from making financial promotions, you can still provide some information about stakeholder pension schemes or group personal pension schemes even though these are financial products. Where you simply give factual information, this does not count as a financial promotion. For example, telling staff they have the option to switch from one default fund to another default fund, without actively inviting them to make a particular choice. However, if you present factual information in a way which also seeks to promote the stakeholder or group personal pension scheme, encourage a switch, or persuade individuals to join it, this could be a financial promotion. In these cases, an authorised firm would need to approve the communications, unless one of the exemptions applies. This is different from the automatic enrolment of employees into a qualifying workplace pension scheme (whether an occupational scheme regulated by The Pensions Regulator (TPR), or a group personal pension scheme regulated by the FCA), which doesn't count as a financial promotion.

As well as any other help you may want to give employees, the law requires employers to enrol certain employees into a pension scheme, give them some specific information in writing and to do this within a certain time. You can read about automatic enrolment duties on the TPR website.

Giving information about other financial workplace benefits

Communications which promote other financial products also usually need to be issued or approved by a firm that's been authorised by the FCA. There are some exemptions which may allow an employer, or an employer's service providers, to promote the following products to staff in some circumstances:

- employee share schemes

- some insurance products (eg life assurance, critical illness, medical, dental and income protection insurance)
- staff mortgages, provided certain conditions are met, and
- staff loans offered to employees (eg travel card loans)

Be careful not to give regulated advice

You will probably not be able to answer questions such as:

- which of the investment funds offered by the pension scheme should I choose?
- would I be better off putting my money into something instead of a pension such as an ISA or the Lifetime ISA?
- is it a good idea to transfer benefits under my old pension scheme into this scheme?

To answer these kinds of questions would need a detailed understanding of an individual's financial circumstances and their expectations and priorities. But if you get that information and answer their questions, you could be giving regulated advice. You should not suggest that you are able to give such advice. If you do, and employees or scheme members act on this advice, you may risk becoming liable for any losses.

You need to be authorised by the FCA if you are in the business of giving regulated advice and are benefitting commercially from doing so. Trustees will also need to bear in mind that they have a fiduciary duty to their membership. So they will need to consider carefully whether it would be appropriate for them to offer any advice, in their capacity as trustees, to members.

What you might want to do instead

Rather than answering specific questions, you could instead consider how you can give staff more general information and support to help them make their own financial decisions.

You can signpost staff to publicly available resources for information and guidance about financial matters, such as the services provided by the Money and Pensions Service (MaPS) including The Pensions Advisory Service, the Money Advice Service (MAS) and Pension Wise. They have published specific documents on key subjects, such as the [MAS guide](#) to pensions and retirement.

As well as your automatic enrolment obligations, you can also give employees purely factual information on their stakeholder or group personal pension scheme, as long as you don't present it in a way which tries to promote the pension scheme or persuade individuals to join it. This means that, among other things, you can provide the Key Features Document for the stakeholder or group personal pension scheme. This has essential information that staff will need to know. You could also provide factual information about an occupational pension scheme (which is not a stakeholder pension scheme or a group personal pension scheme), and this would not come under the restrictions on promoting financial products.

Information which is not about investments or financial products does not have to be FCA-regulated. So an employer can freely provide support to encourage their staff to ensure that, for example:

- their tax code is correct
- they are claiming appropriate benefits
- they have made a will

Equally, general help and information for employees on things like budgeting or comparing utility providers are outside the scope of FCA regulation and employers can provide this.

Introducing members to regulated pension products or advice

This section is relevant to employers and trustees of both defined contribution (DC) and defined benefit (DB) schemes. There are some additional considerations for employers and trustees of DB schemes (see the 'Safeguarded benefits' section below).

Providing support on accessing pensions

You may want to help pension members better understand their options for accessing their pension savings.

You can do this by:

- Giving members information about the options available within the scheme, and about the member's right to transfer their benefits to an alternative arrangement to access other retirement options.
- Giving members generic information about retirement options, for example explaining the difference between drawdown and annuities. Where members have a DC pension, we encourage you to signpost them to [Pension Wise](#) so that members can understand all their options for accessing their pensions.
- Signposting members to tools that are balanced and objective such as those provided by the MaPS, which include a [pension calculator](#), an [adjustable income tool](#), an [investment pathways drawdown comparator tool](#) and an [annuity comparison tool](#).
- Helping members understand how to find a safe scheme and how to avoid scams. For example, we encourage you to signpost members to [ScamSmart](#) and tell them that the [FCA Register](#) shows firms that are regulated to provide pension products.

However, if you steer them towards a specific product or provider, you could misdirect members to a product that does not meet their needs.

Introducing members to regulated pension products

If you steer members towards a specific FCA-regulated product, except for auto-enrolment purposes, you could, as a matter of law, be carrying out a regulated activity known as the 'arranging activity' in some circumstances. If you are an employer or a trustee, you would be carrying out the regulated activity known as the 'arranging activity' if:

- a. you are 'making arrangements with a view to transactions', and
- b. you are doing it by way of business

For example, you could be 'making arrangements with a view to transactions' if you steer members to buy a pension or retirement income product operated by an FCA-regulated firm, other than when employees are enrolled into a group personal pension scheme. This could happen if you direct members who want to take benefits to a specific regulated product, such as an annuity or a personal pension offering drawdown, by giving them a website link or similar (see also the 'Authorisation' section above).

Introducing members to advisers

You may want to signpost or arrange access to financial advice for scheme members. This may lead to the member using the funds in their pension scheme to buy an alternative product. In general, you are unlikely to need to be authorised if you:

- state that an employee will need to get advice from an FCA-authorized firm if they are interested in considering whether it may be appropriate for them to transfer (if their transfer value is more than £30,000), and
- signpost an industry-wide directory of FCA-regulated financial advisers and nothing more

Arranging for employees to get regulated advice

You may want to arrange access to advice through a named FCA authorised firm. You may be in better position to identify a suitable firm with the relevant permissions and better able to negotiate good terms with that adviser than individual employees or scheme members. Alternatively, some trustees may see value in appointing independent third party experts to recommend a firm and to undertake ongoing review of the quality of the advice service provided by the firms. You can do this as long as you take appropriate care not to undertake the regulated activities of giving advice and arranging for transactions on certain financial products. There are a variety of ways in which you can help your employees without undertaking these activities (see further below). If you are concerned that you are at risk of giving advice or arranging transactions, we encourage you to take legal advice.

Different types of financial advice firms

Financial advice can be either 'independent' or 'restricted'. Independent advisers can offer the full range of available financial products and providers. Restricted advisers can only offer advice on a limited selection of products and/or providers. For example, they might only offer products from particular providers or limit the range of product types they consider. The restriction may or may not be pension related. All financial advice firms have to be authorised by the FCA. And both independent and restricted firms must meet the same requirements to ensure they are providing suitable advice.

We know that some employers or trustees are worried they could be considered to be making arrangements with a view to transactions (see 'Introducing members to regulated pension products' above) if they refer members for regulated advice. This is because members of an occupational scheme, having taken advice, may subsequently buy rights in FCA-regulated pension products.

A one-off exercise of identifying suitable advisers, such as providing a list of advisers that scheme members may like to use, is by itself unlikely to be considered to be making arrangements with a view to transactions 'by way of business'. So it would not be considered to be a regulated activity requiring authorisation.

Arranging for scheme members to get independent advice on a broad range of pension products they can transfer to is likely to fall outside the regulated activity of making arrangements with a view to transactions. So, for example, this is likely to be the case if you introduce members of your occupational scheme to an authorised person with a view to that person providing independent advice about regulated pension products generally, including more than just insurance-based products.

For these purposes, we think that it may be harder for a restricted advice firm to satisfy the requirement to give independent advice. This is because the independent advice must be given on a range of pension products, including more than just insurance-based products, which might be more difficult for a restricted advice firm to offer.

Paying for advice

Where employers are not required to pay for advice (see also 'Paying for advice on giving up safeguarded benefits' below), you may want to contribute to the cost of advice, depending on any relevant tax constraints. If you choose to contribute to the cost of advice for your employees as an employer (but are not required to do so), you should be aware of the government's income tax exemption for [Employer-arranged pensions advice](#). We think it is good practice to make employees aware that HMRC treats advice costs over a certain amount (which is set out in Regulations) as a benefit in kind.

If you do not subsidise the cost, you may want to tell employees about the pensions advice allowance. The allowance lets them take up to £500 from a money purchase pension pot up to 3 times during their lifetime to pay for pension advice (but also see the section on 'Paying for advice on giving up safeguarded benefits' below) without this benefit being taxable. However, not all pension providers have processes which let customers access the pension advice allowance from their pension pot. You can also remind members who are considering accessing their DC pension pot that they can obtain guidance from [Pension Wise](#) free of charge.

You should note that employees cannot use the pensions advice allowance to pay for advice on giving up a DB pension. This is because the legislation limits the use of the allowance to pensions and retirement advice which is not advice on safeguarded benefits (ie the allowance cannot be used for advice on 'conversion or transfer of pension benefits' given under Article 53E of the Regulated Activities Order).

Safeguarded benefits

You may also want to help members make decisions about giving up one type of pension benefit for another type of pension benefit. Some pension schemes provide pension benefits that include a promise about the income they will provide. These are known as 'safeguarded benefits'. The Government's [factsheet](#) gives more information about this. A DB pension scheme is a safeguarded benefit.

Sometimes a member wants to give up safeguarded benefits for a pension that offers flexible benefits, such as a DC scheme. These schemes give members more flexibility on how they can take their benefits. But in most cases, there are certain legal requirements that must be met before this transaction can take place. These are described further below. You should be aware how the requirements affect how you can help members.

Getting appropriate independent advice

If the cash equivalent transfer value of the pension is over £30,000, these requirements mean that a member must take independent advice before they can transfer any funds.

When advisers give advice on giving up safeguarded benefits such as a DB pension, they will usually give 2 pieces of regulated advice:

1. advice on giving up safeguarded pension benefits, and
2. advice on where funds may then be transferred

The trustees must check that a member has taken 'appropriate independent advice' (on 1 above) before agreeing to release the safeguarded benefit funds.

The 'appropriate' in 'appropriate independent advice' means the regulated activity of 'advising on conversion or transfer of pension benefits'. In other words, advice that is given by a firm authorised by the FCA to give this advice. Trustees can use the Financial Services Register to confirm the firms which are able to give this advice. For DB transfers or conversions, firms must have the full FCA permission for 'advising on pension transfers and opt-outs'. There is a limited version of the same permission for simpler safeguarded benefit transfers, such as giving up guaranteed annuity rates. Firms themselves are responsible for ensuring that a suitably qualified individual gives or checks this advice.

The DWP confirmed to the FCA in 2015 that the 'independent' requirement in 'appropriate independent advice' means that advice should be given by a firm that is independent of the employer or trustees/manager of a scheme.

The 'independent' requirement in 'appropriate independent advice' is different from the distinction between independent and restricted financial advice firms. You can appoint either type of financial advice firm to meet the 'appropriate independent advice' requirement (but see the section on 'Arranging for employees to get regulated advice' above for more information about restricted advice firms advising on the destination of transferred funds).

The trustees' role

TPR has published regulatory guidance on DB transfers and conversions. It states that it is not the trustees' role to prevent a member from making decisions which the trustees might consider to be inappropriate. When the trustees check that the member has taken 'appropriate independent advice', they should treat the advice as confidential to the member. So trustees should not ask for a copy of the advice the member has received or ask about the substance of the advice. They should just confirm that the adviser's confirmation meets the legislative requirements.

When a trustee receives written confirmation from an adviser that a member has received 'appropriate independent advice', they must check that the firm has the correct permission to provide that advice. For DB transfer advice, the FCA has stated that firms can only give a confirmation of advice where they have given full pension transfer advice, not abridged advice. Abridged advice is a short form of advice which can only result in 2 outcomes, either a recommendation that the member should stay in the scheme or a statement that it is not clear whether the member should stay in the scheme or transfer without undertaking the full advice process.

Giving generic information on conversion or transfer of pension benefits

To avoid giving advice, you should not give information that suggests whether or not a member should transfer/convert their safeguarded benefits into flexible benefits.

You can give generic information that presents a balanced and factual view of the general advantages and disadvantages of keeping safeguarded benefits or transferring/converting those benefits into flexible benefits. For example, if you want to give information on retiring early, you could state that taking benefits early from a DB scheme will reduce the benefits payable each month (if that is the case) but, on the other hand, if a transfer or conversion proceeded, drawdown funds would need to last longer if they started to be taken earlier because of early retirement. Similarly, you can give factual information on the relative risks of DB and DC, such as who carries the investment and longevity risk and what that means for future income streams. You may find it helpful to read the FCA's [guidance](#) on how advisers can give information to consumers on DB transfer or conversions without giving advice, for example when having an initial conversation about accessing secure pension benefits.

You could signpost members to the FCA's [consumer information on DB transfers](#), and [what to expect from advice](#). This includes a [video](#) explaining the advice process. The Pensions Advisory Service, part of the Money and Pensions Service (MaPS), also offers [information on DB schemes](#).

You should not give information to individuals that can imply a certain course of action is right. So you should not present a scenario showing that 'people like you' take this course of action or say 'this is what I would do if I were you'. Giving examples based on limited individual information can give members the impression that the same course of action is also right for them.

Giving numerical information about the DB scheme

You can give information to members of a DB pension scheme about the different ways in which they can take their benefits, or how they can structure their benefits under that scheme, including illustrative figures. This information is outside of the FCA's regulation. This means that you can give illustrative figures such as:

- combinations of available lump sums and the projected level of income from the scheme at normal or early/late retirement ages
- the effect of giving up some inflation-linked pension increases in favour of a higher starting pension ('pension increase exchange'), if this option is available
- the effect on future income from the scheme of taking a partial transfer
- a transfer value
- a statement of entitlement

Considerations when giving factual numerical information based on transfer values

You can give guaranteed transfer values that members have requested. You may also give transfer values if the member hasn't asked for them. But you should consider whether giving an unsolicited transfer value is likely to result in good outcomes for members. Some members may misunderstand how a seemingly large transfer value is equivalent to the level of scheme benefits on offer.

You might try to give some context for the transfer value to help members understand the relationship between the transfer value and the scheme benefits. But you need to take care that you do not steer a member towards a transfer/conversion when you provide context for the transfer value. If you do, you would be undertaking a regulated activity. You might do this, for example, if you show illustrative values based on the income the transfer value could generate outside the DB scheme as this might influence a member towards a transfer/conversion. A value is illustrative if it uses assumptions about the future. For example, if the value is based on assumed investment returns or inflation.

So you should consider other ways you could provide some context that enables members to appreciate the relationship between the transfer value and the increasing DB scheme income they would give up. For example, as consumers often underestimate their life expectancy, many members may not appreciate how long the DB scheme benefits, including inflation-linked increases, would typically be paid, first to themselves and potentially then to a partner after their death. So you could provide information on average life expectancies, typical payment periods and the impact of pension increases to encourage members to think about the relationship between the DB income stream and the transfer value.

You will not be steering members towards a transfer or conversion if you signpost them to reliable sources of independent information on pensions options such as the Money Advice Service or Pension Wise, which are both part of MaPS. For example, you could signpost members to annuity comparison or drawdown tools on these websites. You could also signpost to objective information on retirement living standards. If you signpost to similar tools on the websites of FCA-regulated firms, you should satisfy yourself that they are balanced and objective.

Under current legislation, if you signpost members to information sources from commercial organisations, including FCA-regulated firms, you may be carrying out the 'arranging activity' (see 'Introducing members to regulated pension products' above). For example, if you signpost to drawdown tools based on a specific product. If you embed any external informational tools into the scheme's offering, you need to do this in a balanced way so that members do not think you are steering them towards a specific outcome.

You can give members factual information which is generally available to the public to provide context for the transfer value. So for a member who has reached minimum retirement age, you could provide the level of income that could be provided by a lifetime annuity currently available on the open market using the transfer value. Where an exact equivalent annuity is not available, you should use the closest available annuity for a fair comparison. In most cases, this is likely to be an index linked, joint life annuity. This could also be shown alongside an early retirement quote from the DB scheme at the same age for a more directly relevant comparison.

Where you show several annuity quotes, you can name the providers. But if you only provide a quote for 1 named provider or product, you might be seen as recommending a particular product or undertaking the arranging activity. You could also show the range of available annuity quotes, without naming any providers (eg the lowest and highest quotes from those offered by several providers). You can also signpost members to information from the Money Advice Service on [how they can shop around for an annuity](#).

Unlike quotes on currently available annuity prices, information about future drawdown is not factual as it depends on assumptions rather than facts. Making assumptions on future investment returns and charges may well influence the decisions that members make. Information which suggests one or other option is good, or better, could influence a member's decision on a transfer or conversion so is likely to be advice. This includes identifying options based on asking the members about their attitude to risk. Information about future annuity costs also involves making assumptions about future market conditions. So we suggest employers and trustees use only factual information on currently available annuities.

In summary, we consider that you should not give scheme members illustrative, as opposed to factual, figures that compare the outcomes a member might get if they keep a safeguarded benefit or transfer/convert it into flexible benefits. This kind of analysis might steer a member towards a specific course of action, which is part of the regulated advice process. If you provide a transfer value comparator, in accordance with the FCA's rules, you should consider whether you are doing it by way of business and need FCA authorisation. A transfer value comparator is part of the regulated advice process and compares the transfer value with the estimated value needed now to buy an equivalent future annuity. A transfer value comparator is different to the statement of entitlement that certain members have a statutory right to request every 12 months.

Employers and trustees are not prevented from showing information that is required by law or regulation. For example, trustees of safeguarded benefit schemes operated by FCA-regulated firms may still provide future annuity projections which comply with relevant rules.

Paying for advice on giving up safeguarded benefits

Employers must pay for 'appropriate independent advice' where an employer (or a trustee or a third party on its behalf) contacts 2 or more members/survivors of its DB pension scheme and sets out the available options in terms that 'encourage, persuade or induce' them to request to transfer or convert their DB pension. You should also be aware of the [industry code](#) on incentive exercises. Employers can either arrange and pay for 'appropriate independent advice' to be provided, or, where they do not arrange advice, they must pay for advice arranged by the member or their survivor. There are some income tax [exemptions](#) where an employer is required to pay for the advice.

As noted above, employees cannot use the pensions advice allowance to pay for advice on giving up a DB pension.

Examples of practice and considerations

Example 1: occupational pension scheme – providing information

The ABC Pension Scheme Limited is a defined contribution occupational pension scheme with several sponsoring employers. The scheme's trustees prepare a series of documents for members that set out the terms of the scheme and the different investment options that members can choose.

As the scheme is an occupational pension scheme, these communications are not regulated advice and so the restrictions on promoting financial products do not apply.

Trust law gives pension trustees a duty of care to ensure that their actions are in the best interests of the membership. They need to make sure that the communications are accurate.

Example 2: employer-sponsored retirement seminars

Employer DEF knows that many of its employees are over 50 and so may be starting to consider their retirement options. DEF has both a legacy occupational pension scheme and a newer group personal pension scheme (which they use for automatic enrolment).

DEF decides to commission an employee benefit consultancy (EBC) to give a series of in-work retirement seminars to interested employees. The EBC is an FCA-authorized firm and, as such, is responsible for any regulated activity that it undertakes. These seminars cover factual information only, but there is also the possibility to get individual advice from an FCA-regulated adviser, which the firm will subsidise. DEF should make it clear that employees can get advice from FCA-regulated advisers other than EBC. This is in line with FCA expectations.

As the seminars cover factual information, this would not generally be regulated advice but may be classed as a financial promotion, depending on the content and context. The EBC should be able to advise the employer about this. If it amounts to a financial promotion then it would need to be approved by an FCA-authorized person but the EBC would be responsible for arranging this.

Advice given may or may not be regulated, but – as it is delivered by an FCA-regulated adviser and not the employer – the adviser bears the responsibility for complying with relevant FCA rules.

Example 3: employer is an FCA-regulated firm

The trustee of a scheme is organising 'at retirement' advice to members who may be considering switching to an FCA-regulated scheme to take benefits. The employer is part of a group that includes an FCA-regulated firm. The scheme is a hybrid pension with a legacy DB section and an open DC section. When considering an advice firm to recommend to members, the employer wants to ensure that the advisers can provide independent advice by meeting the 'appropriate independent advice' requirement.

The employer considers the DWP's confirmation that 'appropriate independent advice' must be provided by an adviser that is independent of the employer/trustee. So they choose a firm that is completely separate from the group to maintain the independence of the advice from the employer sponsor.

Example 4: DB scheme – providing indicative transfer values

A scheme offers members an online system where, among other things, they can view indicative transfer values. The employer considers that showing the cash equivalent transfer value (CETV) on its own might not be helpful without some context.

So the employer asks for the system to ensure that, before the member can view the transfer value, they have to proceed through a series of generic statements highlighting the risks and benefits of keeping or giving up DB benefits. They also provide signposting to further information on retirement options on the Pension Wise website.

When the member requests a guaranteed CETV, the scheme immediately sends the member information about The Pensions Advisory Service, and a link to the FCA video on pension transfer advice before they get the CETV. This encourages the member to get guidance and be aware of the advice process before seeking advice.

