

Q&A for LGPS Pension Funds

Version 1.1 - issue date 10 July 2015

Transfers from the LGPS to Defined Contribution Schemes from 6 April 2015

Introduction

The 2014 Budget announced reforms to workplace pensions to offer greater flexibility in the way individuals aged 55 and over can access their defined contribution (DC) pension savings. The Government also confirmed that transfers out of funded public sector schemes (i.e. the Local Government Pension Scheme (LGPS)) and private sector defined benefit (DB) schemes would continue to be permitted. The Government also acknowledged that the additional flexibility from 6 April 2015 for people with DC benefits may increase interest from members wishing to transfer from DB to DC pension schemes. In acknowledging this the Government introduced safeguards including a requirement for members to get appropriate independent advice from a Financial Conduct Authority (FCA) authorised adviser (where their benefits in the Scheme are valued at more than £30,000). In addition another safeguard includes the potential for (in certain circumstances) reductions in transfer values from funded public service pension schemes to take place.

The Pension Schemes Act 2015 provides the primary legislation which introduces these safeguards. At present there are 6 different pieces of secondary legislation¹ being introduced on 6 April 2015. In addition, the Pensions Regulator (TPR) has issued guidance on DB to DC transfers and conversions².

TPR has also issued a draft “Essential Guide to Communicating with Members about Pension Flexibilities”³. The FCA has published policy statement PS14/17⁴ which sets out the standards to be met by the guidance providers together with a package of rules for firms directly affected by the new flexibilities. The FCA has also issued policy statement PS15/12⁵. The rules described in this Policy Statement came into force on 8 June 2015 and require that advice or a personal recommendation about a pension transfer must be given by a pension transfer specialist or, if an individual who is not a pension transfer specialist gives advice or a personal recommendation about a pension transfer on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a

¹ The six SIs include the Occupational and Personal Pension Schemes (Transfer Values) (Amendment and Revocation) Regulations 2015, the Occupational and Personal Pension Schemes (Disclosure of Information)(Amendment) Regulations 2015, the Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015, DRAFT Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015, the Pension Schemes Act (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 and the Public Service (Civil Servants and Others) Pensions (Consequential and Amendment) Regulations 2015.

² To view this guidance visit [TPR's website](#).

³ To view this guidance visit [TPR's website](#).

⁴ To view this policy statement visit the [FCA's website](#).

⁵ To view this policy statement visit the [FCA's website](#).

pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook.

The information provided below is our best understanding of the legislation and guidance at the time of publication and is subject to amendment on changes to the legislation and guidance.

This Q&A:

- is designed to assist Administering Authorities Pension Funds in ensuring they meet their duties under the new legislation by providing high level information and **should** be read in conjunction with the full administration guide entitled "Legislation, Guidance and Information relating to Freedom and Choice"⁶ and
- only covers the implications of Freedom and Choice in respect of safeguarded benefits in the LGPS. "Safeguarded benefits" are a member's main scheme DB benefits and do not include any AVCs which a member may have. Information about transfers and other direct implications of Freedom and Choice on AVCs is included in separate guidance⁷.

Please note that a Q&A directed at scheme members will be made available shortly.

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⁶ This paper is currently being finalised and will be issued shortly.

⁷ See the [Technical Note on Freedom and Choice](#).

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Q1. What is Freedom and Choice (F&C)?

A1. From 6 April 2015 members of certain pension schemes will have more freedom over how they take their money from their pension pot.

These changes affect pension scheme members who are:

- age 55 or over, and
- have a pension based on how much has been paid into their pot (a defined contribution pension).

There will now be four main options when members in a defined contribution pension scheme access benefits from their pension pot including:

- purchase an annuity (annual pension) or scheme pension if offered by the scheme and with/without a pension commencement lump sum
- flexi-access drawdown
- taking a number of cash sums from uncrystallised funds at different stages
- taking the entire pot as cash from uncrystallised funds in one go.

To help people understand their retirement choices, the government has introduced a free and impartial service called Pension Wise. This help will be available to members online, over the phone or face to face. More information about Pension Wise and the choices that members taking flexible benefits from a DC scheme have can be found at www.pensionwise.gov.uk.

Q2. Does F&C impact on LGPS members?

A2. Not directly. Safeguarded benefits in the LGPS are not DC benefits so there are no new options, choices or flexibilities provided under F&C for safeguarded benefits in the scheme, either at retirement or before.

However, all members ceasing with 3 or more months membership, apart from members retiring with immediate payment of benefits on redundancy, efficiency or ill health grounds, must be given basic information about the right to a transfer of their accrued safeguarded benefits.

Members with less than 3 months’ membership are not entitled to a CETV.

Q3. Does F&C impact on LGPS members indirectly?

A.3. Yes, F&C has implications as it affects those members who choose to use the right to transfer their LGPS benefits (i.e. their safeguarded benefits) to a scheme which will convert those safeguarded benefits into flexible benefits e.g. to a defined contribution scheme which, as part of that scheme, will be able to use the flexibilities under F&C when providing benefits to the person.

Q4. Does the LGPS Pension Fund need to inform members about F&C from April 2015?

A4. No, LGPS Pension Funds do not need to provide any information about the new flexibilities for DC schemes under F&C. However, as stated above, all members ceasing with 3 or more months membership, apart from members retiring with immediate payment of benefits on redundancy, efficiency or ill health grounds, must be given basic information about the right to a transfer of their accrued safeguarded benefits. Also, if approached by a member for information on a transfer to a DC scheme, Funds will need to inform members of the new advice requirements regarding transfers of safeguarded benefits to DC schemes.

Q5. What information does the LGPS Pension Fund need to give members in respect of a potential transfer to a DC scheme offering flexible benefits?

A5. Members with safeguarded benefits must, within one month of the administering authority receiving a request after 5 April 2015 for a CETV quote, be told of the requirement to take appropriate independent advice prior to taking a transfer to a scheme offering flexible benefits and the requirement that is on the LGPS Pension Fund to check that such advice has been taken before any payment can be made. However, the requirement only applies if the CETVs for all of the member's safeguarded benefits in the scheme are more than £30,000 (prior to any reduction (P) of a CETV following a designation of the LGPS Fund by HM Treasury, the relevant Minister of the Crown or Scottish Ministers).

Note that there is no requirement to take independent advice if the member leaves with more than 3 months but less than 2 years membership (and does not have an entitlement to a deferred benefit in respect of that membership) as, although the member has a right to a CETV, they have no deferred benefit entitlement and therefore no safeguarded benefits in the LGPS.

LGPS Pension Funds are only legally required to supply the CETV value for the member's safeguarded benefits in respect of the request for a quote. However, in order to ensure that the authorised independent adviser has the necessary understanding of the LGPS in order to be able to provide appropriate advice to the member, Funds are recommended to include additional information alongside the transfer quote. Such information could include a copy of the full scheme guide or a copy of the brief scheme guide and a link to the online version of the full scheme guide.

Q6. What are the new advice requirements for transfers from the LGPS to a DC scheme from April 2015 (where the CETVs for all of the member's safeguarded benefits in the scheme are more than £30,000)?

A6. Members are obliged by law to obtain appropriate independent advice from an authorised independent adviser, normally at their own cost, before requesting the payment of a transfer. The member must prove that this advice has been taken before the LGPS Pension Fund can release the transfer payment.

Q7. What is appropriate independent advice?

A7. Under the Pension Schemes Act 2015, "appropriate independent advice" means advice that is given by an authorised independent adviser, and meets any other requirements specified in regulations made by the Secretary of State.

The regulations require that advice must be specific to the type of transaction proposed by the member.

Q8. Who are authorised independent advisers?

A8. Under the Pension Schemes Act 2015, “authorised independent adviser” means a person who:

- has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations* made by the Secretary of State (i.e. authorised by the FCA), and
- meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent.

*Regulations define the specified regulatory activity as the activity described in article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

If LGPS Pension Funds are asked by members how they can locate an authorised independent adviser they should be referred to the [FSA register](#), the [Personal Finance Society website](#), the [Association of Professional Financial Advisers](#) website or their [local Citizens Advice Bureau](#). Funds **must not** either attempt to provide the advice themselves or refer the member to a particular authorised independent adviser.

Q9. How does the member prove that they have taken this advice?

A9. Regulations set out the minimum information to be included in order for the LGPS Pension Fund to be satisfied that advice has been taken. This information is:

- that the adviser has permission under the Financial Services and Markets Act 2000 to carry out the regulated activity described in article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits
- the advice has been given on the transfer of safeguarded benefits to flexible benefits and that the advice is specific to the type of transaction proposed by the member
- the name of the member that was given the advice and the scheme in which they hold the safeguarded benefits to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for.

In addition the FCA rules require that advice or a personal recommendation about a pension transfer must be given by a pension transfer specialist or, if an individual who is not a pension transfer specialist gives advice or a personal recommendation about a pension transfer on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook.

A standard 'advice confirmation form' is attached as [appendix A](#) of this document.

Q10. What are the requirements on the LGPS Pension Fund on receipt of a transfer payment request accompanied by proof of advice?

A10. On receipt of the above proof of advice the LGPS Pension Fund must check the authorisation status of the adviser's firm by looking up their entry in the FSA register using the FCA reference number provided.

Q11. Will the proof of advice detail the advice given?

A11. No, the purpose of the proof of advice is to confirm that the legally required advice has been obtained by the member. LGPS Pension Funds should not seek to obtain, in any way, information with regard to the advice given as doing so may introduce a level of liability to the LGPS Pension Fund.

Q12. Are there any exemptions to the above rule on seeking advice?

A12. The LGPS Pension Fund is required to carry out a check that the advice has been taken unless the total value of all the member's safeguarded benefits across all LGPS funds in the relevant Scheme (i.e. England and Wales, or Scotland, or Northern Ireland) is £30,000 or less. In such cases then the member is not legally required to take this advice.

The LGPS Pension Fund must take all reasonable steps to check that the member's safeguarded benefits are £30,000 or less, for example asking the member to declare if that they have any other LGPS benefits before making any transfer payment to a scheme that may provide flexible benefits without proof of advice.

Unless the member confirms otherwise, the administering authority must assume that the member has requested a CETV statement in order to arrange flexible benefits under another pension scheme and, in the absence of confirmation from the member to the contrary, assume that the member does have other LGPS benefits.

Even if the total value of the member's CETVs in respect of safeguarded benefits are £30,000 or less, the administering authority must inform the member that they are recommended to take financial advice before making a decision about transferring their pension rights (given the implications for their pension provision).

Q13. What is the total value of benefits in the Scheme?

A13. Total value of benefits is the cash equivalent value of all of the member's safeguarded benefits in the Scheme. This includes active, deferred, deferred refund and pension credit benefits and includes all benefits across all funds in the relevant Scheme.

Q14. How will the LGPS Pension Fund know what the total value of the member's benefits is?

A14. The LGPS Pension Fund will be required to calculate a cash equivalent for all safeguarded benefits within that Fund. If the CETV is £30,000 or less, the member will need to request a cash equivalent value from all the other LGPS Pension Funds where they have safeguarded benefits in the Scheme. The total value of their safeguarded benefits is the sum of all the cash equivalent values.

Unless the member confirms otherwise, the administering authority must assume that the member has requested a CETV statement in order to arrange flexible benefits under another pension scheme.

Given the above, it is recommended that, unless the member confirms in writing that:

- a) they are not transferring to a scheme which can offer flexible benefits, or
- b) if they are transferring to such a scheme, they have no other rights to safeguarded benefits in the LGPS in England and Wales (for a member of the scheme in England or Wales) or they have no other rights to safeguarded benefits in the LGPS in Scotland (for a member of the scheme in Scotland), or they have no other rights to safeguarded benefits in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland).

the administering authorities should assume that the member is transferring to such a scheme and that the member has other rights in the LGPS.

Q15. Does the member have to transfer all of their rights?

A15. No. For example, if a member has two deferred benefits, they can transfer one and not the other.

It should be noted that a member only has the right to a CETV under the Pension Schemes Act 1993 if the member has accrued rights to safeguarded benefits under the LGPS, has ceased active membership, has not had a Crystallisation Event (CE)⁸ in respect of accrued benefits in the same category, and has elected for a CETV at least 12 months prior to Normal Pension Age or, in the case of a deferred Pension Credit member, at least 12 months prior to Normal Benefit Age.

Thus, a member in receipt of a bare GMP, or who is receiving benefits in respect of a flexible retirement, will not be able to take a CETV in respect of the remainder of their benefits as they will have had a CE in relation to the benefits in the defined benefit category. Similarly, a deferred pensioner member (i.e. a suspended Tier 3 ill health pensioner) is not entitled to a CETV as they will already have had a Crystallisation Event in relation to benefits in the defined benefit category.

It should also be noted that, apart from members retiring with immediate benefits on the grounds of redundancy, business efficiency or ill health, members retiring with an immediate entitlement to benefits under the LGPS who are at least a year away from Normal Pension Age will have a right to a CETV as an alternative to a pension from the LGPS.

Q16. What happens to the LGPS benefits following a transfer to a DC scheme?

A16. From the point of transfer all rights to any benefits of any description in any circumstance in the LGPS included in the transfer are extinguished.

Q17. How much will the advice cost and who must pay for it?

A17. The cost will vary depending on the authorised independent adviser the member decides to use. The cost will fall to the individual member unless the employer is required to meet the cost under the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015.

Q18. When would an employer have to meet the cost of advice?

A18. Where an employer communicates with members in a way that sets out the options available to the member in terms that encourages, persuades or induces the member to request a transfer of benefits from the LGPS (their safeguarded benefits) to a scheme which will convert those safeguarded benefits into flexible benefits (e.g. a defined contribution scheme) then they must meet the cost of advice.

Q19. Does the member have to follow the advice they receive?

A19. No. However, if they choose to ignore the advice and proceed with the transfer they will have no redress from either the authorised independent adviser or, provided the transfer is to a registered pension scheme or to a qualifying recognised overseas pension scheme, the LGPS Pension Fund, should that decision prove to be financially disadvantageous to them.

Q20. What protection does the member have if they follow the advice?

A20. If the advice given by an authorised independent adviser is to proceed with the transfer and it proves to be financially disadvantageous to the member, they would need to seek redress from the authorised independent adviser who provided that advice. There will be no redress from, or reinstatement in, the LGPS Pension Fund where the benefits have been transferred (provided the transfer is to a registered pension scheme or to a qualifying recognised overseas pension scheme).

Q21. Are there any potential circumstances where the redress would fall on the LGPS Pension Fund?

A21. Yes. Even where proof of advice is given, the existing checks to ensure that the transfer is a recognised transfer under section 169 of the Finance Act 2004 will still need to be carried out i.e. a transfer to a registered pension scheme or to a qualifying recognised overseas pension scheme. Any LGPS Pension Fund who does not ensure that the transfer is 'recognised' may be liable for redress from the member.

Q22. Are there any other rules which could impact on the transfer value?

A22. Yes.

1. The Pension Schemes Act 2015 and regulations provide for an in extremis power for the Secretary of State to enable transfer values to be reduced where a scheme or part of a scheme has been 'designated'.
2. It is understood that in respect of the LGPS the power where it is used will relate to individual LGPS Pension Funds as part of the scheme and not to the LGPS as a whole.
3. However, there will be strict processes to follow before this power may come into use. In particular, HM Treasury or the relevant minister of the Crown, or Scottish Ministers will need to be convinced that the actual payments, or expected future payments, of CETVs in respect of members taking the CETVs to acquire rights to flexible benefits in other schemes will result in an increased likelihood of payments from public funds (i.e. from local authorities / councils) into the LGPS (or Fund) having to increase to cover liabilities.
4. For example such a risk may occur in circumstances where the volume of transfers out has had a sufficient impact on cash flow to cause the Fund to sell assets (of the wrong type, at the wrong time) in order to meet benefit payments. It is important to note that any impact will be considered at the total fund level and not at the individual employer level. Therefore, although

there may be circumstances where small amounts of transfers could have a detrimental impact on the position of individual employers these would not constitute sufficient reason for HM Treasury or the relevant minister of the Crown, or Scottish Ministers, to use this power.

5. Funds may apply to TPR to use the existing power to delay transfers out for up to 12 months from the point a request to transfer. This power stems from the Pensions Schemes Act 1993, sections 99(4) and (4A) and 101J(2) and (2A).

Q23. Does this legislation impact on the timing and processing of paying transfers?

A23. Yes, in part. Firstly a request for a statement of entitlement (i.e. a transfer quote) can only be made by a member who ceased active membership of the scheme at least a year before their Normal Pension Age and who elect for a transfer at least one year before their Normal Pension Age.

Note that the definition of Normal Pension Age in section 100C of the Pension Schemes Act 1993 is:

(1) In this Chapter “normal pension age”, in relation to a category of benefits under a pension scheme, means—

(a) in a case where the scheme is an occupational pension scheme and those benefits consist only of a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies,

(b) in any other case where the scheme is an occupational pension scheme and the scheme provides for the member to become entitled to receive any of those benefits at a particular age on retirement from any employment to which the scheme applies, the earliest age at which the member becomes entitled to receive any of the benefits, and

(c) in a case not falling within paragraph (a) or (b), normal minimum pension age as defined by section 279(1) of the Finance Act 2004.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.⁹

The existing timescales for providing the statement of entitlement (i.e. a transfer quote) and paying the transfer remain unchanged.

Changes to processes for CETV requests received after 5 April 2015 include requirement to:

- ask the member to confirm in writing:

⁹ Given the above definition it is arguable that the Normal Pension Age in the LGPS in England and Wales is age 60 for pre 1 April 2014 leavers and age 55 for post 31 March 2014 leavers; in the LGPS in Scotland it would be age 60 for both pre 1 April 2015 and post 31 March 2015 leavers; and in the LGPS in Northern Ireland it would be age 60 for pre 1 April 2015 leavers and age 55 for post 31 March 2015 leavers. That would seem to debar many of the scheme members who would be interested in ‘Freedom and Choice’. The LGPC Secretariat has sought clarification from DWP that this is not the intention of section 100C of the Pension Schemes Act 1993 and that the policy intent is for the NPA linked to State Pension Age (minimum age 65) to apply for the time limit to seek a transfer.

- a) whether or not they are transferring to a scheme which can offer flexible benefits, and
 - b) if they are transferring to such a scheme, whether they have other rights to safeguarded benefits in the LGPS in England and Wales (for a member of the scheme in England or Wales) or other rights to safeguarded benefits in the LGPS in Scotland (for a member of the scheme in Scotland), or other rights to safeguarded benefits in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland).
- inform the member, within one month of receiving the CETV request, of the need to take advice if the transfer is to a scheme which can offer flexible benefits
 - inform the member of the £30,000 or less limit on seeking advice
 - check that advice has been taken prior to payment of transfer, and
 - check the FCA authorisation of the adviser.

Q24. What impact will accessing “flexible benefits” have on an individual’s Annual Allowance calculation?

A24. For those LGPS members who also have benefits in a money purchase (DC) pension arrangement which they flexibly access on or after 6 April 2015 there is an impact on the way in which the annual allowance is worked out. More details on this are in the guidance paper 'Legislation, Guidance and Information relating to Freedom and Choice'¹⁰

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¹⁰ See the [Technical Note on Freedom and Choice](#).

Appendix A

Advice Confirmation Form

Confirmation that appropriate independent advice has been obtained from an authorised independent adviser

Information: Before a transfer of safeguarded benefits from the Local Government Pension Scheme (LGPS) can take place a scheme member must provide proof that they have taken appropriate independent advice.

Instructions for completion: This form must be completed by the authorised independent adviser from whom advice has been sought regarding a transfer to an arrangement offering flexible benefits. Once completed, the form should be given to the scheme member who, if they wish to proceed with the transfer¹¹, must also sign the form and return the completed form to **[INSERT LGPS PENSION FUND CONTACT DETAILS]**

1. I **[INSERT ADVISER'S NAME]** have provided advice which is specific to a transfer of safeguarded benefits from the LGPS to an arrangement offering flexible benefits to the scheme member noted in section 5 below and the advice is specific to the type of transaction proposed by the scheme member.

2. I have authorisation from the Financial Conduct Authority and can act as an authorised independent adviser as permitted under Part 4A of the Financial Service and Markets Act 2000, or resulting from any other provisions of that Act, to carry on the regulated activity in Article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

3. I am a pension transfer specialist or, if I am not, the advice I have provided has been checked by a pension transfer specialist.¹²

4. The FCA reference number of the company or business in which I work for the purposes of authorisation from the FCA to carry out the regulated activity in the aforementioned article 53E is **[INSERT FIRM REFERENCE NUMBER]**¹³.

5. This advice has been provided to **[INSERT MEMBER'S NAME and NI NUMBER]** who is a member of the Local Government Pension Scheme in *England and Wales / Scotland/ Northern Ireland* **[DELETE AS APPROPRIATE]**.

SIGNED BY THE ADVISER	
PRINT NAME	
DATE SIGNED	

6. I, the scheme member named in section 5, certify that I have received the advice as set out in section 1.

SIGNED BY THE MEMBER	
PRINT NAME	
DATE SIGNED	

¹¹ The scheme member and the receiving scheme will also be required to sign transfer discharge forms which the LGPS Pension Fund will issue.

¹² A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook.

¹³ The LGPS Pension Fund will check the Financial Services Register maintained by the FCA to check whether the Firm's Reference Number includes permissions to advise on pension transfers and that there is no limitation excluding activity under article 53E.