B&CE response to the Department for Work and Pensions (DWP) consultation on bulk transfers

1. Introduction

B&CE is the provider of The People's Pension. The People's Pension is a master trust serving 2.4 million savers in the auto-enrolment market. We provide low cost, high quality pensions to low and moderate income earners. We are an efficient, private sector alternative to the government-funded state intervention of NEST. We are not reliant on state subsidy of any kind. We are run under a trust in the interest of our members. B&CE Holdings has been providing welfare and employee financial benefits for the construction sector since 1942 (B&CE also provides a stakeholder pension for the construction industry, which serves a further 476,000 members).

2. General comment

The current rules applying to bulk DC to DC transfers were inherited from the pre-existing rules for DB transfer. They are inappropriate for the DC environment, prevent consolidation and can lead to poor member outcomes.

The current requirement for an actuarial certificate with respect to bulk DC to DC transfers without consent impedes such transfers and provides no discernible benefit. We note that the Association of Consulting Actuaries see little merit in the provision of these certificates in the context of DC-DC transfers and consider that the requirement may simply be "an accident of history"[1].

We are not arguing that there should be no quality assessment prior to a transfer. It is vital that a quality threshold is met. The regulator should set out what the quality criteria ought to be, and these should be applied by the trustees of the ceding scheme. Given that such criteria are likely to be identical to the criteria which the Pension Regulator will deploy in the implementation of the Pension Schemes Bill, it makes sense for compliant master trusts to be defined as meeting the quality requirement with no further duplicative assessment taking place. Duplicative assessments ultimately simply constitute unnecessary time delays and costs, impacting on members' savings.

In addition, in the context of a scheme that is being wound up and where there is no longer a sponsoring employer, it makes sense to expedite matters by not requiring member consent (as long as the transfer is to a scheme authorised by the regulator). However, currently, transfers without consent cannot be conducted unless there is a "relationship" between employers. In this situation, where there is an employer that has not remained in business, transfer is likely to be frustrated.

3. Responses to Questions

Q1: In your view, how common are occupational DC –DC bulk transfers without consent and can you give examples of circumstances in which they occur?

Due to the difficulties and cost in obtaining actuarial certificates these transfers are not as common as their benefits would warrant. We are aware that one of the leading Employee Benefits Consultancies will usually recommend against this course of action for the DC schemes they advise due to the legal difficulties in pursuing it. Also, the caveats that the actuary typically puts into a certificate render them effectively pointless in a DC to DC bulk transfer.

Where DC to DC bulk transfers take place, it is usually where an employer has chosen a new scheme or provider for ongoing contributions and the old DC scheme becomes deferred. A bulk transfer is likely to take place either as part of or before a wind-up commences.

1 ACA "Some thoughts on the bulk transfer without consultation legislation" (2017)

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The DC to DC transfer as a result of wind-up had been relatively rare until the advent of multi-employer schemes with bundled charging structures that are willing to receive transfers of assets from legacy arrangements.

Q2: Can you give an indication of the time/costs of complying with the current requirements, number of DC-DC bulk transfers per year, time/cost of producing the actuarial certificate, and any other information you think might be helpful?

We have seen the Regulation 12 certificate costs quoted at £2,000 and £50,000 from different actuarial firms in the last 12 months. Both into the same receiving scheme and both ceding arrangements had a similar and non-complex benefit structure.

It should be highlighted that the costs of producing the certificate are independent of the results, so an employer may be asked to fund the work for the transfer with no guarantee the actuary may agree the benefits are "broadly no less favourable".

Q3: Do you think there is sufficient clarity regarding what is meant by "broadly no less favourable" and how consistently do you think it is being applied? Some examples of how actuaries actually apply this provision would be helpful.

There is very little clarity, and as a result there is a very wide range of interpretations. Some examples include:

1. If £1 leaves scheme A and is invested in scheme B, then the transfer credits are broadly no less favourable.

2. Charges must be equivalent or lower in the receiving scheme.

3. A range of likely investment outcomes across various cohorts of membership are compared.

Example 2, is difficult as the actuary is often asked to opine on the relative merits of active vs passive funds, or diversified growth funds vs balanced funds, where differences in costs can be material and the relative benefits of each approach are open to interpretation. Scheme governance, communications, and fund range will usually differ and there is no accepted methodology for weighting the different attributes.

Charging models also create confusion as it is not uncommon for DC schemes to be set up on an unbundled basis where the employer pays for the administration through the services of a third party administrator and the member pays the investment costs only. Many modern schemes and the majority of master trusts are set up on a bundled basis where the member pays the cost of administration through an annual management charge. The employer subsidy in the unbundled model makes a direct comparison difficult, especially given the employer is rarely contractually bound to pay this additional cost in perpetuity.

Answers to Example 3 requires actuaries to make assumptions about future macro and micro economic environments and is impossible in any realistic sense. Some, but not all, lawyers, are taking the view that in order that the receiving DC scheme be assessed as "broadly, no less favourable" that the underlying investment funds have to be assessed as delivering the same return as the funds in the ceding scheme. As it is impossible to predict whether one investment fund will deliver greater or lesser returns than another in the long run, this interpretation requires that transfer to any receiving scheme requires the latter to set up a fund which mirrors the former. This effectively means that true consolidation cannot take place after transfer and that the ceded scheme remains a distinctly managed entity within the receiving scheme. The impracticality of this legal interpretation is underlined even on its own terms by the observation that even passive funds are managed. So even if the ceding scheme had remained in operation, the mix of assets and investment philosophy would have changed as the macro and micro economic environment evolved. So to truly "mirror", a receiving scheme would not only have to replicate the asset mix on Day 1 and investment philosophy, it would also have to make the same asset adjustments and adaptions of investment philosophy that the fund managers to the ceding scheme would have made, had they continued to manage the fund for perhaps the next 40 years.

Q4: Do you think that the actuarial certificate or an alternative check of scheme quality still has a role in occupational DC-DC transfers? If so, who ought to carry out such an assessment? What factors should be considered as part of that assessment and which should be excluded? Do you have any thoughts on how the relative strengths and importance of those factors should be weighed up? If not, how would members continue to be protected?

An assessment of quality is essential to protect members' interests. This assessment should be conducted by the trustees of the ceding scheme. They could seek the advice of actuaries to interpret regulatory requirements where this is of assistance. Currently, we find that actuarial certificates are inadequate to provide comfort to trustees. Given the difficulty actuaries have currently in making such assessments, it would make sense if regulators provided guidance as to what represented quality. The assessment should mirror the requirements that master trusts will have to meet in order to be authorised by The Pension Regulator (TPR).

There should be no requirement for an assessment for quality if trustees of a ceding scheme are transferring members to a master trust which has been authorised by TPR under the Pension Schemes Act 2017. This would mimic the safe harbour

previously provided for stakeholder schemes, and is a more robust requirement given that master trusts will be far more stringently regulated under the Pension Schemes Act 2017 than stakeholder schemes are.

The DC bulk transfers must also be in respect of schemes that are not open for future contributions; if these schemes are prevented from transfer to another DC arrangement (usually the scheme that the employer is using for future contributions) they will likely enter wind-up so as to reduce costs for the employer.

The consultation does not currently take account of the fact that trustees have the option of using a Section 32 contract to make a non-consented transfer at this point, without the requirement to get actuarial certification. This creates an obvious regulatory arbitrage. The question asks how will members continue to be protected which seems to assume that the trustee and employer continue to maintain the scheme. This will seldom be the case, as the scheme will usually wind-up and benefits will be bought out via a section 32. Section 32 contracts are not subject to the default fund charge cap and have no trustee board or IGC to provide governance oversight.

Section 32 contracts are effectively contracts for a deferred annuity. This is often a poorer quality contract than that provided in the scheme being used for further contributions, and, does not meet the needs of the scheme members who usually wish to consolidate their DC pots in the arrangement the employer has chosen for future contributions.

We have seen examples of a certificate not been granted for a bulk transfer to a DC scheme and trustees being forced to wind-up to a Section 32, which was higher charging and an objectively worse contract than the intended recipient scheme.

In our view, Section 32 transfers ought at least to be subject to the same consumer protections as other bulk transfers. The government should consider whether they will be appropriate at all in a DC environment where there are authorised master trusts.

Q5: Sometimes occupational DC pensions have valuable guarantees, either borne by the scheme or another body. How do you think the process should differ for these types of scheme?

Any DC scheme that falls into the following category should continue to be subject to the current requirements.

- Contracted Out Mixed Benefit Schemes
- DC schemes previously contracted out on a GMP basis or a reference scheme test basis
- DC schemes with DB underpins

Guaranteed annuity rates and investment returns are extremely rare especially in the DC trust space. There would be little impact if these schemes were also required to have an actuarial certificate or some other form of enhanced oversight on transfer. However, as above, we would suggest that the regulator ought to issue guidance as to what actuaries need to assess in order to make a finding as to the requisite quality or lack of quality of a receiving scheme.

Q6: Do you have any experience of how the scheme relationship condition works in practice? Do you think it serves a useful purpose or does it act as an obstacle in some circumstances? What is the frequency and impact of these obstacles?

We have found the relationship condition to be an impediment to bulk transfers. We cannot see any benefit in retaining this in a DC environment where transfer is into a master trust which has been authorised by the regulator. It potentially prevents any transfer of members where the original employer is no longer in existence.

Q7: What is the impact of the current provisions around bulk transfers for 'orphaned DC schemes', where there are no surviving employers in relation to the scheme? Do you think that we need special provision for such schemes, for example, to allow pension providers to carry out a transfer where certain conditions are met? How do you think this should work in practice?

The impact is that this potentially prevents transfers where the members would be objectively better off if there funds could be transferred.

Where there is a bulk transfer into a master trust which is authorised by the regulator then there should be no need for an actuarial certificate or the relationship condition to be met.

Q8: Are there any other areas of the occupational DC-DC bulk transfer provisions that you think need simplifying and do you have examples of how they are not working?

The particular block transfer requirements for protecting tax-free cash entitlements or pension ages accrued before 2006 are a needless barrier.

There are two requirements:

- Two or more members must transfer from scheme A to scheme B as part of a single transaction.
- The transferring member must not have been a member of the new scheme for longer than 12 months.

The first condition is usually satisfied by a bulk transfer. The second condition doesn't appear to serve any purpose and potentially penalises transferring members in the context of mass auto-enrolment schemes serving members who frequently change jobs. The People's Pension has in excess of 2 million members, and as a result it is not uncommon when conducting a bulk transfer of DC assets that some transferring members have already previously joined the scheme through another employer and as a consequence fail to satisfy the 12 month condition. This seldom prevents the transfer as rules around protected tax free cash and the revaluation basis that applied to these benefits are poorly understood by those in the industry let alone by the average scheme member. But it would mean some members could lose accrued benefits and, if trustees are aware of this, potentially creates an unnecessary barrier to transfer.

Q9: In your view, how common are stakeholder to stakeholder DC-DC bulk transfers without consent and can you give some examples of circumstances in which they occur?

Very rare – these types of activities have to be between stakeholder providers often insurance companies where one provider is exiting the market and another is willing to take on the assets. It is more common for these to take place as a part VII transfer.

Q10: Do you think that the current restrictions on bulk transfers without consent from stakeholder pension schemes should be lifted so that they are treated in the same way as those from personal pension schemes, i.e. under Financial Conduct Authority (FCA) principles and rules? If so, to what types of scheme should these transfers be allowed?

No. Stakeholder pensions were the first attempt to provide serious consumer protection in pensions to employees. It is logical that transfer out of these pensions should only to be to schemes which have the most up-to-date protections for employees. The FCA personal pension protections stem from a regime which relies on the active engagement of informed investors and are not adequate to protect employees. Transfer out of a stakeholder pension is not directed by a trustee whose primary duty is to ensure the best interests of consumers. A requirement to meet a regulatory checklist which sets out best practice regulatory protections for pension savers should be put in place, unless the transfer is to an authorised master trust. This would give current stakeholder providers a choice between upgrading the consumer protections in stakeholder pensions or creating a master trust. Holders of stakeholder pensions should be transferred to the best available of today's schemes, not slightly less poor ones.

Q11: Do you think that providers of transferring schemes should be able to invoke the bulk transfer without consent provisions where a stakeholder scheme has not yet commenced winding up?

Yes.

More information

For further information on this response, or the work of B&CE and The People's Pension, please contact: Andy Tarrant, Head of Policy & Government Relations at andytarrant@bandce.co.uk or 07515 121204.

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