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Mr Charles Henderson

Sent by email: charles.henderson9@outlook.com

11 May 2022

Our Ref: 20220414 ECU B

Dear Mr Henderson,

Thank you for your letter about restricted (non-independent) advice firms advising on pension transfers. You have expressed concerns about the commercial incentives that may motivate restricted advice firms to recommend a transfer. You have also asked for clarification on the requirements which apply to restricted advice firms, when promoting their services on websites or at other times, to make consumers aware of the limitations of the advice they receive.

We note that you have asked us about a specific firm. However, we are unable to comment on the actions of, or our interactions with, named firms.

Pension transfer advice

When consumers take advice on giving up their benefits in a defined benefit (DB) scheme, they would normally receive two pieces of regulated advice:

a) pension transfer advice: advice on whether to give up the benefits in a DB scheme, and
b) investment advice: advice on where to invest the transferred monies, in the event a transfer is suitable.

The two pieces of advice are not completely independent – when firms advise consumers whether it is suitable for them to give up the DB scheme benefits, we expect them to take account of where the funds might be transferred. The two pieces of advice do not have to be given by the same advice firm although where there are two firms involved, we expect them to work closely together. This practice can also help to reduce the risk of scams.

As you indicate, some consumers want to choose their own investment provider if a transfer proceeds. We refer to these consumers as self-investors. It is a commercial decision for all advice firms, whether independent or restricted, to decide whether to provide advice to self-investors. Where they do provide these services, we expect them to obtain relevant information about the consumer's preferred product and the investments that would be held within it, including the potential investment returns and charges. This enables a firm to take account of the features of the proposed scheme in their analysis of the transfer, in the same way as they would if a separate advice firm was advising on the investment destination.

When consumers approach firms for pension transfer advice, we think firms should disclose any circumstances where they will not provide advice, during any initial discussions with the client about the advice process. For example, in our Finalised Guidance on Advising on pension transfers (FG21/3), we said it would be good practice for firms to disclose if they require a minimum transfer value for advice, or whether they will arrange a transfer on an insistent basis if the firm advises against a transfer. Similarly, we also consider it would be good practice for firms to disclose whether they will act on behalf of self-investors. We have specific requirements for firms to disclose whether they offer independent or restricted investment advice services (see below).

When firms give advice, we expect them to meet the same standard of advice, whether they are independent or restricted. Equally, our rules on managing conflicts of interest apply to both types of firm. For example, both independent and restricted advice firms must make consumers aware that if they transfer and take ongoing advice, they can opt out of ongoing advice at any time.

If a firm cannot provide suitable advice to a specific consumer, then they must not provide advice at all. This includes any circumstances where the firm's choice of operating model, such as being a restricted advice firm, means they cannot offer suitable advice.

Disclosing the nature of advice provided

We have rules in place which mean that a firm must disclose whether its advice will be independent or restricted, and the nature of any restriction. The firm must include the specific term 'independent advice' or 'restricted advice' as appropriate in its disclosure. This is to permit the client the opportunity to review the basis that the advice is provided on and ensure that they are happy with this arrangement. In addition, we require a firm to outline whether the advice will be based on a broad or more restricted analysis of different types of relevant products. Where the advice will be restricted advice, the firm must disclose whether the range of investments covered will be limited to relevant products issued or provided by entities having close links with the firm or any other legal or economic relationships, such as contractual relationships. We require that the firm disclose the status of this advice in good time prior to the provision of the recommendation to ensure that the client has sufficient opportunity to consider the nature of the advice that they would receive prior to the advice being provided.

You asked specifically about communications via websites. Our rules require a firm to provide disclosure on whether advice is independent or restricted through a 'durable medium', for example paper. The information may instead be disclosed through a website. If a firm does choose to disclose the information in this way, we have set out a number of requirements that must be met, including for example that the client consents to provision of the information in that form, and the information must be accessible continuously by means of that website for as long as the client may reasonably need to inspect it. Additionally, where an adviser engages verbally with a client, they must disclose the 'restricted' nature of the advice orally, in good time before the advice is provided.

Firms should also be aware that any communication is capable of being a financial promotion depending on whether it includes an invitation or inducement to engage in financial activity and they need to comply with financial promotion requirements, if applicable. Firms must ensure that financial promotions are fair, clear and not misleading.

We do not require firms to state the nature of advice services offered on their website. We note that firms may offer different types of service for different product types and should not disclose one type of service for its business as a whole. Where firms do disclose their status, they would need to disclose that the service is different for different products.

In conclusion, I note that you consider that the whole regime for pension transfer advice needs a rethink and in addition to the points covered above, you mention the ability for capable consumers to opt out of receiving advice. We have no power to enable such opt outs under the current legislation, so you may wish to raise your concerns with the Department for Work and Pensions.

I hope this is helpful.

Yours sincerely,

Dave Eaton
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