

FCA GUIDANCE ON PART VII TRANSFERS - PROPOSED CHANGES

GC 21/3: Proposed changes to guidance on the FCA's approach to the review of Part VII insurance business transfers

On 8 July the FCA published a [consultation](#) on amending the guidance on their approach to the review of Part VII insurance business transfers. The proposed amendments reflect the FCA's recent experiences of transfers, feedback from stakeholders and Brexit. The FCA has taken the opportunity at the same time to make a large number of relatively minor drafting changes, and in some places it has firmed up language to make it clear where guidance constitutes clear expectations rather than simply nice-to-haves. Some key areas covered in the proposed changes are discussed below.

Pru/ Rothesay

Aspects of the proposed changes appear to have been prompted by the Prudential/ Rothesay Life transfer. This is particularly the case in the section outlining the FCA's approach, where the FCA is proposing adding a statement that the FCA will consider whether the applicant and IE have done enough to identify previous statements made by applicants which policyholders could reasonably seek to rely on to object to the scheme, and whether policyholder communications address these issues in enough detail and with sufficient prominence. It also suggests that:

- applicants should take reasonable steps to address concerns where objections are based on a perceived inconsistency between previous statements made by the applicants about the proposed scheme; and
- consideration of objections should allow for the possibility that the scheme may need to be changed in response, or if not why that would not be necessary to ensure there is no material impact "and full reasoning as to why that is the case". It is not clear, however, where this full reasoning should be articulated.

The FCA has also deleted the requirement that where reinsurance has been put in place prior to transfer the IE should consider if it is appropriate to compare the proposed scheme with the position the transferor would be in if they did not benefit from the reinsurance. This may be a response to the attitude taken at first instance to the reinsurance arrangement in the Pru/ Rothesay case, where the judge considered that the reinsurance had largely achieved the commercial purposes of the scheme.

The independent expert

A number of new provisions have been included in the revised draft guidance relevant to the role of the independent expert. In particular, the proposed new guidance states that:

- the IE report should cover the impact of a scheme on service levels
- the IE report (as well as the applicant's witness statements) should confirm that FG18/4 has been complied with, or explain why this is not appropriate or relevant in respect of specific points
- the IE report should address significant changes during the transfer process such as due to pandemic or economic fluctuations
- the appointment of an IE to work on two interacting projects concurrently is an area of potential concern to the FCA
- considerations of sufficient skill and experience will apply to the IE's core support team and peer reviewer as well as the IE itself.

Use of digital communications

A new paragraph has been introduced addressing notification using digital communications. Although not explicitly stated, the FCA indicates that it will consider allowing these instead of postal communications provided a number of factors are taken into account. These include the policyholder's preferred method of communication, that communications with customers are

customarily conducted in electronic form and that there is a process for managing failed delivery. This is potentially helpful for some firms needing to communicate with large number of customers, but is likely to be of less use to insurers with life or other long-tail business where a large number of policyholders may still usually receive their communications in paper form.

Brexit

Previous requirements relating to comparative regulatory framework analysis have been deleted as the post-Brexit Part VII transfer regime is now essentially domestic.

Comment

The proposed changes to the guidance are not dramatic but will have some impact. Many reflect the current approach of the FCA when reviewing Part VII transfers and are therefore already being taken into account by applicants. The FCA has taken an increasing interest in the content of the IE report in recent years, with corresponding increasing expectations as to the matters to be covered by the IE. Changes influenced by Pru/ Rothesay suggest that the FCA may have more regard in future to policyholder objections based on previous statements made by the transferor, even though the Court of Appeal found in that case that the objections were not sufficient to decline to sanction the scheme.

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