

FYI[®] Alert

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Providing pension scheme members with access to a financial adviser

Retirement planning is a challenge for many scheme members. Therefore, trustees of defined benefit (DB) pension schemes are increasingly considering facilitating member access to independent financial advisers (IFAs).

The Pensions Ombudsman has now issued guidance, aimed at assisting DB trustees in providing factual information to members, including direction on where they can obtain independent financial advice.

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Background

Increasingly, trustees of DB schemes are helping members by providing them with access to an appointed IFA or a panel of IFAs, as trustees are in a better position to identify a suitable firm and are able to negotiate significantly better terms with that adviser. Historically, trustees of DB schemes have hesitated to recommend or facilitate access to IFAs, with concerns around the scope of their responsibilities in providing financial advice to members.

In March 2021, the Ombudsman provided guidance on factual information pension scheme administrators, trustees and employers, can provide to members in respect of independent financial advisers. In the same month, The Pensions Regulator and the Financial Conduct Authority ('FCA') published guidance on the information that employers and trustees can provide to members without needing to be subject to FCA regulation – including arranging access to advice from an IFA.

This briefing note provides a summary of what is expected of pension scheme administrators, trustees and employers, in this area and our recommended approach to appointing an IFA.

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Directing members to an IFA

The Ombudsman has confirmed that DB schemes can provide members with factual information, including direction on where members can obtain independent financial advice. That includes providing members with a list of IFAs for them to consider and choose from, who are regulated and who have been vetted by whoever has compiled the list.

The FCA has also expressed the view that a one-off exercise of identifying an IFA or a panel of suitable IFAs that scheme members may like to use would not generally be considered to be a regulated activity requiring authorisation by the FCA.

DB schemes need to take appropriate care not to undertake the regulated activities of giving advice and arranging for transactions on certain financial products. If concerned, they are encouraged to take legal advice.

Selecting an IFA or panel of IFAs

DB schemes are expected to list IFAs that cover the whole of the market (and not those restricted to certain types of products or providers), carry out and be able to demonstrate appropriate due diligence, and continue to monitor the IFAs included on a list.

Typical criteria in selecting IFA firms include:

- level of charges (particularly any discounts negotiated for members);
- reputation;
- required regulatory permissions;
- any past regulatory sanction;
- particular area of expertise;
- geographical location; and
- customer satisfaction reviews.

Determining a panel of firms should be selected in a manner which is demonstrably impartial, and which does not conflict with competition law.

When communicating to members on the issue of IFAs, trustees should confirm they are just facilitating access to advice, and the choice of whether to obtain advice, and if so who from, is solely that of the member. Furthermore, they must make it clear that the legal relationship is solely between the member and the IFA, the trustees are not responsible for the IFA's advice, and the list is provided purely as a potential aid to the member who is, of course, free to select an IFA of their own choosing if they so wish.

Protecting against a complaint

Whilst there is some risk in facilitating access for members to an IFA, there is also a risk in leaving members to negotiate their retirement planning alone, or with an unsuitable financial adviser.

Members, or former members of a scheme, can make a complaint to the Ombudsman that the trustees undertook insufficient due diligence in preparing the list of IFAs. However, the trustees will generally be in a stronger position if they can show that they took sufficient steps to check an IFA's status with the FCA, had no other reason within their knowledge as to why the IFA should not be able to provide competent, regulated advice, and had continued to monitor these aspects at an appropriate level.

It goes without saying that trustees establishing an IFA panel should, where appropriate, seek professional advice before proceeding.

Comment

Members need help; proper retirement planning is difficult, and even if members choose a respectable IFA, it can be a costly business. DB trustees are well positioned to provide access to help at affordable prices. This guidance is both sensible and welcome and provides pension scheme administrators, trustees and employers, with confidence that trustees/sponsors can appoint an IFA or panel of IFAs if they have used appropriate criteria in selecting an IFA, have communicated with the members clearly on the arrangement, keep the arrangement under review, and have acted in good faith.

If you would like to know more about appointing an IFA, or have already appointed an IFA and want to discuss the contents of the new guidance, then please contact your Buck Client Executive.

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