

Understand our position on insistent clients, following the pension reforms in 2015.

Our rules

The Handbook does not refer to insistent clients and there are no rules or guidance specifically about this. In practice, there may be occasions where the client wishes to take a different course of action from the one you recommend and wants you to facilitate the transaction against your advice. When a client does this they are commonly referred to as an insistent client.

Steps to take when advising an insistent client

There are three key steps:

1. You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.
2. You should be clear with the client what the risks of the alternative course of action are. Where the advice includes a pension transfer, conversion or opt-out, there may be additional requirements such as ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1.8).
3. It should be clear to the client that their actions are against your advice.

Advice rules

Although there are no rules specifically in relation to insistent clients, you must follow the normal advice rules first. So you must obtain the necessary information about the client and their investment objectives, financial situation and knowledge and experience so as to enable you to make a personal recommendation which is suitable (see COBS 9.28). You must also act honestly, fairly and professionally in the best interests of the client (see COBS 2.1.18).

You must ascertain the client's investment objectives before making a recommendation. A request or preference by the client for a particular solution – for example accessing cash from a pension – is not an objective. You must ascertain the client's actual investment objectives so that you can advise on a suitable course of action to meet them. You must also communicate with the client (for example in the suitability report) in a way that is clear, fair and not misleading (see Principle 7 and COBS 4.2.1R). There is no rule to prevent advisers from transacting business against their advice if the client insists.

FCA concerns

We have seen cases where:

- there was an inadequate assessment of the other options which would meet the client's objectives;
- excessive numbers of insistent clients resulted from the adviser's advice not being sufficiently clear;
- the risks of the client's preferred course of action were not clearly explained
- it was a 'papering exercise'; ie the adviser had processed the case on an insistent client basis but this was clearly not representative of what had happened in practice

- the adviser advised the client not to transfer out of the DB scheme (although the client insisted) but then recommended a product that was not suitable (with reference to the outcome and assessment of the information gathered about the member).

In the project on enhanced transfer value pension transfers where a high proportion of cases (59%) were insistent clients, 34% were found to be unsuitable and there were disclosure failings in 74% of cases.

How common or rare does the FCA expect insistent client cases to be?

It is unlikely to be common for clients who are seeking advice to disregard that advice. Where clients are required to take advice (for example in relation to DB pensions and other safeguarded benefits) then some may decide to disregard that advice. We do not have a pre-conceived idea about how often this will occur.

What to include in the suitability report;

In the normal way, the suitability report must specify the client's demands and needs, explain why you have concluded that the recommendation is suitable and explain any possible disadvantages for the client (COBS 9.4.7R). For pension transfers, conversions or opt-outs there may be additional requirements, such as:

- comparing the benefits to be paid under the DB scheme with the benefits afforded by the personal/stakeholder scheme
- ensuring that the comparison includes enough information for the client to be able to make an informed decision, for example, explaining the risk transfer from the scheme provider to the client and the extent of the potential loss of benefits, and
- not viewing suitability in the light of the critical yield alone (see COBS 19.1.8).

Having set out your advice clearly in the suitability report, you need to be clear with the client:

- about the risks of the different course of action
- that he/she is acting against your advice This could be set out in the suitability report or elsewhere

What to keep on file

The file should record the normal advice process referred to above. In addition, the file should show that you have made it clear to the client the risks associated with the alternative course of action and that the client is acting against your advice.

Client disclaimers

It should be clear to the client what your advice is, what the risks of the alternative course of action are, and that the client is acting against your advice. There is a risk that a disclaimer form could be seen as 'just another form to sign' and not be clear to the client.

If the client uses their own words to indicate that they want to act against your advice then this would normally be clear.

Charging insistent clients

It is up to the firm how to charge clients and a firm must determine and use an appropriate charging structure for calculating its adviser charges. The requirements for the disclosure of adviser charges are set out in COBS 6.1A.8 If you charge on a contingency basis then this may give rise to a conflict of interest. You should recognise – and appropriately manage – any potential conflicts of interest.

Giving advice to clients but not transacting

It is up to firms to decide what services they wish to offer.

What to keep on file

If you provide advice (personal recommendation) then you need to meet the requirements set out above, for example, provide suitable advice and a suitability report. This is because the rules around advice apply, irrespective of whether the transaction is arranged or not.

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- See more at: https://www.the-fca.org.uk/pension-reforms-and-insistent-clients?field_fcasf_sector=436&field_fcasf_page_category=unset#sthash.dmr93rdt.dpuf