



# Better workplace pensions: Banning member-borne commission in occupational pension schemes

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October 2015

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# Introduction

This consultation seeks views on the most effective means of regulating to ban member-borne commission payments in relevant occupational pension schemes that provide money purchase benefits and are being used as qualifying schemes for automatic enrolment.

## About this consultation

### Who this consultation is aimed at

We would particularly welcome responses from providers and members of occupational pension schemes including third-party administrators, asset managers, independent financial advisers and adviser firms, trustees and managers of schemes, employers, and interested members of the public.

### Purpose of the consultation

The purpose of this consultation is to seek views on the most effective means of regulating to prevent charges being imposed on members of occupational pension schemes used for automatic enrolment to recover the cost of commission paid to an adviser. This consultation follows the Government's announcement in March 2014 that its intention was to prohibit member-borne commission payments to an adviser in those schemes from April 2016.

### Scope of consultation

This consultation applies to England, Wales and Scotland.

### Duration of the consultation

The consultation period begins on 26 October 2015 and runs until 27 November 2015.

### How to respond to this consultation

Please send your consultation responses to:

Better Workplace Pensions  
Private Pensions and Stewardship Directorate  
Department for Work and Pensions  
1<sup>st</sup> Floor, Caxton House  
6-12, Tothill Street  
London SW1H 9NA

Email: [reinigorating.pensions@dwp.gsi.gov.uk](mailto:reinigorating.pensions@dwp.gsi.gov.uk)

## Government response

We will aim to publish the government response to the consultation on the [GOV.UK](https://www.gov.uk) website. The consultation principles encourage Departments to publish a response within 12 weeks. The report will summarise the responses and include draft regulations for consultation.

# How we consult

## Consultation principles

This consultation is being conducted in line with the [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the Compact: the agreement between government and the voluntary/community sector will continue to be respected

## Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator  
2<sup>nd</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Email: [caxtonhouse.legislation@dwp.gsi.gov.uk](mailto:caxtonhouse.legislation@dwp.gsi.gov.uk)

## Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk)

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

# Chapter 1: Commission and Consultancy Charging

1. Automatic enrolment continues to bring more people into workplace pension saving in the UK; creating new dynamics in the pensions market and new responsibilities on government and industry to protect savers.
2. Before automatic enrolment, most workplace pensions business was sold through an intermediary market where advisers found customers for providers and were often remunerated through commission. However, the introduction of automatic enrolment has brought millions of new customers to the doors of providers, thereby changing the traditional role of intermediaries in the pensions market.
3. In order to protect savers and to help ensure value for money the Government has undertaken a number of consultations on minimum standards to improve outcomes for savers. In March 2014, the Government published the Command Paper 'Better workplace pensions: Further measures for savers'<sup>1</sup>, which announced the Government's intention to introduce a range of measures to protect members automatically enrolled into a workplace pension scheme. This included a ban on commission in all qualifying schemes used for automatic enrolment.
4. The Government's Command Paper 'Better workplace pensions: Putting savers' interests first'<sup>2</sup>, which was published in October 2014, stated that the range of charges measures announced in the March 2014 Command Paper would apply to money purchase benefits within these qualifying schemes.
5. Commission typically relates to advice or services that have been agreed between a service provider<sup>3</sup> and an adviser. The service provider remunerates the adviser and recoups this cost through member-borne charges. Commission may take the form of an up-front payment known as initial commission or an on-going payment commonly referred to as trail commission.
6. Consultancy charging was introduced following the Retail Distribution Review (RDR) and consists of a fee being agreed between an adviser and employer and then recouped through a member-borne charge.

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<sup>1</sup> 'Better workplace pensions: further measures for savers', DWP, March 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/298436/better-workplace-pensions-march-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298436/better-workplace-pensions-march-2014.pdf)

<sup>2</sup> 'Better workplace pensions: Putting savers' interests first', DWP, October 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400617/better-workplace-pensions-putting-savers-interests-first-response-print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400617/better-workplace-pensions-putting-savers-interests-first-response-print.pdf)

<sup>3</sup> By service providers, we mean bundled pension providers, third party administrators or asset managers who are providing services directly to trustees of an occupational scheme used for automatic enrolment.

## The Retail Distribution Review

7. The Government's announcement in March 2014 was preceded by a number of interventions. The RDR<sup>4</sup>, which was introduced on 31 December 2012, banned service providers from offering or paying commission and advisers from seeking commission payments or receiving them. The ban covered new personal pensions, Group Personal Pensions and Group Stakeholder Pensions.
8. However, the nature of the RDR meant that while no new commission arrangements could be set up in personal and workplace personal pension schemes, employees could continue to be enrolled into existing schemes containing these charges. In addition, the RDR did not prohibit commission in occupational schemes, including those used for automatic enrolment.
9. Consultancy charges were introduced as a result of the RDR, but were banned in workplace personal pension and occupational pension schemes by DWP regulations which were introduced following a Government review. The ban covered schemes that provide money purchase benefits and are used as automatic enrolment schemes, except where there was a legal agreement in place before 10 May 2013.

## OFT Market Study

10. Following the RDR, the Office of Fair Trading (OFT) undertook a market study into defined contribution workplace pension schemes. In September 2013, the OFT published their findings and made a number of recommendations.<sup>5</sup> This included a recommendation that schemes with in-built commission should not be used for automatic enrolment. This was because the OFT were concerned that members could pay commission without realising; and that commission presented a barrier to switching providers or schemes since advisers would lose the commission stream if they advised an employer to switch in the future.

## Government consultation

11. Following the RDR and OFT market study, the Government consulted in October 2013 on a range of measures to protect savers defaulted into workplace pension

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<sup>4</sup> 'Retail Distribution Review', Financial Conduct Authority, <http://www.fca.org.uk/firms/firm-types/sole-advisers/rdr>

<sup>5</sup> 'Defined contribution workplace pension market study', Office of Fair Trading, September 2013, [http://webarchive.nationalarchives.gov.uk/20131101164215/http://www.offt.gov.uk/shared\\_offt/market-studies/oft1505](http://webarchive.nationalarchives.gov.uk/20131101164215/http://www.offt.gov.uk/shared_offt/market-studies/oft1505)

savings, including a cap on charges in default funds, and a measure to ban commission in pension schemes used for automatic enrolment.<sup>6</sup>

12. The consultation set out the concerns identified by the OFT market study and sought information about commission, including how much on average commission increased the annual management charge in percentage points.
13. The Government's response to the consultation, published in March 2014, confirmed that the Government's intention was to ban member-borne commission payments to advisers in qualifying schemes used for automatic enrolment. It also confirmed that commission would be subject to the cap on charges in default funds from April 2015.
14. In October 2014, the Government confirmed that it would consult in 2015 on banning commission in certain occupational pension schemes used as qualifying schemes for automatic enrolment.<sup>7</sup>
15. The Financial Conduct Authority (FCA) consulted on rules to ban commission that was not prohibited by the RDR, and consultancy charging, in workplace personal pension schemes used for automatic enrolment in October 2014<sup>8</sup> and published rules in March 2015<sup>9</sup>. These rules banned consultancy charges in these schemes from April 2015 and will ban existing commission from April 2016.

## **Banning commission in occupational pension schemes**

16. As set out in October 2014, the Government now wishes to seek views on the most effective means of regulating to ban commission and consultancy charging in relevant occupational pension schemes used for automatic enrolment. The regulations the Government intends to make will, alongside corresponding FCA rules, help to ensure that members are not enrolled into workplace pension schemes used for automatic enrolment where the members are charged for commission payments to advisers.

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<sup>6</sup> 'Better workplace pensions: a consultation on charging', DWP, October 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254332/cm8737-pension-charges.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254332/cm8737-pension-charges.pdf)

<sup>7</sup> 'Better workplace pensions: Putting savers' interests first', DWP, October 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400864/better-workplace-pensions-putting-savers-interests-first-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400864/better-workplace-pensions-putting-savers-interests-first-response.pdf)

<sup>8</sup> 'Charges in workplace personal pension schemes', Financial Conduct Authority, October 2014, <https://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-24>

<sup>9</sup> 'Final rules for charges in workplace personal pension schemes and feedback on CP14/24', Financial Conduct Authority, March 2015, <https://www.fca.org.uk/static/fca/documents/policy-statements/ps15-05.pdf>



17. Trustees<sup>10</sup> may be one step removed from negotiations and agreements in relation to member-borne commission payments between service providers and advisers. This means that designing regulations to achieve such a ban in occupational schemes involves navigating a number of complex issues.

18. This consultation, therefore, seeks the views of the pensions industry and other stakeholders on the options the Government has developed to prevent member-borne commission payments to advisers in occupational pension schemes used for automatic enrolment. The following chapter sets out the principles that form the basis of these options.

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<sup>10</sup> The term 'trustees' will be used throughout this consultation document for simplicity, but this should be understood to also include managers in the case of the small number of occupational schemes that are not trust-based.

# Chapter 2: Principles for banning member-borne commission in occupational pension schemes

Chapter 1 set out the context of the Government's intention, as announced in March 2014, to ban commission in relevant occupational pension schemes used for automatic enrolment, and the Government's intention to consult on how best to achieve this ban.

This chapter sets out the key principles that form the basis of the options the Government has developed and which are consistent with the approach set out in previous Command Papers, and the approach taken by the FCA in relation to their commission ban in workplace personal pension schemes used for automatic enrolment. Chapter 3 sets out the options that the Government has developed and is seeking views on as part of this consultation.

## Key principles

1. We have considered the most effective means of regulating to ban member-borne commission in relevant occupational pension schemes used for automatic enrolment based on four key principles.
2. The principles are:
  - the regulations will only apply to occupational pension schemes that provide money purchase benefits and are used for automatic enrolment. The regulations will apply to all arrangements within a scheme – not just the default arrangement
  - the regulations will not prevent scheme members from choosing to pay for advice or services provided by an adviser if they wish to do this
  - the regulations will not prevent employers from accessing advice provided by an adviser where they pay for these services themselves
  - the regulations will not prevent trustees from accessing advice or services provided by an adviser.
3. These principles mean that the proposed options are focussed on restricting how advice and services are paid for.
4. The Government's rationale for adopting these principles is rooted in the outcome of the Government's original consultation on this measure in October 2013, and the needs and obligations of parties involved in workplace pension saving. In line with the approach taken with the charge cap and the ban on Active Member

Discounts (AMDs), we want to ensure that the member-borne commission ban supports the roll out of automatic enrolment by minimising disruption to trustees, employers, and others involved in running workplace schemes.

## Scope of the commission ban

5. Following its public consultation, the Government concluded that the blanket commission charging of all scheme members for advice or services, either provided to an employer or made available to members, is inappropriate in schemes used for automatic enrolment. Indeed, the OFT found that members could pay commission without realising or without accessing advice or services made available by an adviser. They recommended that commission be banned in schemes used for automatic enrolment.
6. The Government intends, therefore, that the regulations will apply to relevant occupational pension schemes used as qualifying schemes for automatic enrolment. By relevant schemes, we mean all qualifying schemes apart from certain small schemes which are set out below. The Government does not currently intend to extend the scope of the ban to schemes that are not used for automatic enrolment.
7. It is also the Government's intention that the regulations will apply to money purchase occupational pension schemes, as well as any money purchase benefits offered by non-money purchase schemes. As set out in the Command Paper 'Better workplace pensions: Putting savers' interests first'<sup>11</sup>, the intention is that commission will also be banned from Additional Voluntary Contributions (AVCs) in qualifying occupational schemes, even where these are the only money purchase benefits. This is consistent with the approach taken with the ban on AMDs and with the application of FCA rules in relation to banning commission charging in workplace personal pension schemes.
8. Commission is more likely to occur in bundled pension schemes (where the employer or trustees procure administration and investment services through a single pension provider) than unbundled schemes (where the trustees procure investment management or administration services directly from separate providers). However, there is some evidence<sup>12</sup> to show the presence of commission in unbundled schemes, so we consider that the commission ban should cover bundled and unbundled schemes as well as single and multi-employer schemes such as master trusts.

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<sup>11</sup> 'Better workplace pensions: Putting savers' interests first', DWP, February 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400864/better-workplace-pensions-putting-savers-interests-first-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400864/better-workplace-pensions-putting-savers-interests-first-response.pdf)

<sup>12</sup> 'Landscape and Charges Survey 2013: Charges and quality in defined contribution pension schemes', DWP, February 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281128/rr859-defined-contribution-pension-schemes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281128/rr859-defined-contribution-pension-schemes.pdf)

9. We understand that an organisation may offer not only administration and/or investment services but also advisory services. It may be possible, therefore, in organisations such as these for the part of the organisation providing administration services to make a commission payment to the part of the organisation that provides advice services. The structure of these organisations offering such ‘integrated services’ may vary, but we would normally expect there to be a connection between the parties offering these services. For example, the parent company may provide the investment management and administration services, with advisory services being provided via a subsidiary of the parent company. We intend that the commission ban will also apply to these types of providers where the relevant schemes are used for automatic enrolment.

**Consultation Question 1:** Do you have any comments regarding the proposed scope of the ban?

**Consultation Question 2:** Do you have any comments on how organisations that offer the “integrated” services described above are set up, and any potential challenges in ensuring that such organisations are subject to the ban on member-borne commission in occupational pension schemes?

10. In line with the approach taken with the charge cap, we propose that small self-administered schemes, executive pension schemes and schemes with only one member are excluded from the scope of the ban.
11. Members of the types of schemes described above are typically actively engaged in the running of their schemes, which can include choosing what services to access or funds to invest in. This level of direct and active engagement means they would be far less at risk than, for example, members who have not made active choices about the schemes they are in or services they may unwittingly pay for via a commission charge.

## Consultancy charges

12. Consultancy charges were largely banned in relevant automatic enrolment schemes by DWP regulations in 2013. The March 2014 Command Paper confirmed the Government’s intention that from April 2015 no qualifying scheme would be able to contain a consultancy charge structure. The Government further announced in the October 2014 Command Paper that as consultancy charges were not prevalent in occupational pension schemes it would not introduce a specific measure to ban these charges in April 2015. Instead, the intention is that the commission ban will be designed to prevent any remaining or future consultancy charges from being used in any relevant occupational pension scheme used for automatic enrolment.

13. The FCA published rules in April 2015 that effectively banned consultancy charges in workplace personal pension schemes used for automatic enrolment.

## Access to advice and services

14. The Government is clear that the practice of commission charging in schemes used for automatic enrolment is inappropriate. Therefore, the Government intends that the ban will prevent member-borne charges in respect of certain advice or services provided by an adviser, except where such costs arise as part of the lawful and effective operation of a scheme, for example, where trustees are required to seek professional advice when deciding on an investment strategy.

15. In addition, the Government recognises the value of members being able to access advice or services that will help them make informed choices about their pension savings. We, therefore, want to ensure that the ban strikes the right balance between enabling members to access and pay for advice if they choose to do so and stopping members from being blanket charged for advice or service they may not even be aware of.

16. **Trustees:** the intention is, therefore, that the ban will not cover advice or services provided by an adviser to trustees so as to allow trustees to continue to use member-borne charges to pay for advice that they need or are required under law to obtain to run their schemes effectively.

17. **Members:** in addition, members will still be able to independently enter into specific agreements with advisers for any advice or services they have chosen to obtain. Chapter 3 sets out the conditions we intend introducing to protect members in these situations and seeks views on whether it is appropriate or possible for an administration charge against the member's funds to be used to pay for advice or services members have elected to access.

18. **Employers:** our intention is that the ban will prevent member-borne charges being used to pay for any advice or service the employer obtains from an adviser. Employers can still seek advice, but will have to bear the costs themselves.

# Chapter 3: Options for preventing member-borne commission

Chapter 1 set out the context of the Government's announcement in March 2014 that member-borne commission payments to advisers would be banned in workplace pension schemes used for automatic enrolment, and the rationale for the ban. Chapter 2 outlined the key principles that underpin the options the Government has developed to deliver the ban.

This chapter sets out the two main options the Government has developed to deliver the ban. We would welcome views on these options.

## Commission

1. Commission typically refers to an arrangement whereby a financial adviser is remunerated by a service provider who imposes an administration charge on scheme members to recover this cost. There are various forms of commission arrangements in pension schemes but the three predominant forms are:
  - initial commission: this refers to an arrangement whereby a service provider makes an up-front lump sum payment to an adviser in return for new business; the costs are recovered through a member-borne charge.
  - deferred commission: this refers to an arrangement whereby a service provider agrees a payment with an adviser and makes the payments, for example, over 2-3 years once a scheme has been established; the costs are met by the service provider who recovers this cost through a member-borne charge.
  - trail commission: this refers to an arrangement whereby on-going payments for advice or services provided by an adviser are met by the service provider who recovers this cost through a member-borne charge.
2. We understand, therefore, that adviser remuneration does not involve a direct flow of funds from the scheme to the adviser. Instead, it is the service provider who makes the commission payment to the adviser and recovers this amount via a member-borne charge. Additionally, trustees are not typically involved in agreeing commission arrangements, so they may not be aware that commission is being charged in existing qualifying schemes used for automatic enrolment. This means that designing effective regulations to achieve a ban on commission in these schemes involves working through a number of complex issues. The options presented in this chapter, therefore, reflect the roles of the parties involved in commission arrangements and our understanding of how they are typically established.

**Consultation Question 3:** Do you have any comments on:

- a) whether our understanding of adviser remuneration reflects how commission is typically paid in occupational schemes used for automatic enrolment;
- b) whether there are any other examples of commission payment models that are used in these schemes and how common these are;
- c) the prevalence of initial commission arrangements in occupational pension schemes used for automatic enrolment

## Options for preventing member-borne commission payments to advisers

3. The Government has developed two main options to stop members being charged to recover the cost of commission payments to advisers in relevant occupational pension schemes used for automatic enrolment. The options are:
  - Option A - **placing a duty on trustees** to ensure that members are not charged for the cost of any commission payments to advisers in relation to any new commission arrangements; and to use their best endeavors to remove any such existing member-borne commission arrangements in these schemes; and
  - Option B - **placing a duty on service providers** to prevent members being charged for the cost of commission payments to advisers in relation to any new commission arrangements; and to remove any such existing member-borne commission arrangements in these schemes
4. New commission arrangements refers to any new agreements or contracts that may be entered into on or after date the ban comes into effect; and existing commission arrangements refers to those agreements or contracts that were established before the ban takes effect.
5. By service providers, we mean bundled pension providers, third party administrators or asset managers who are providing advice and services directly to an occupational scheme used for automatic enrolment. For the purposes of the options set out below, we intend that service providers will not include persons providing legal, auditor or actuarial services to trustees of the occupational pension scheme. We also do not intend service providers to include organisations providing payroll or middleware services in relation to the scheme. This is because we have not seen any evidence that suggests these bodies would enter into commission arrangements or be paid on a member-borne commission charging basis.
6. These options are now explored in turn.

## Option A

7. Under this option, a requirement would be placed on trustees of occupational pension schemes used for automatic enrolment to ensure that members in schemes they are managing are not subject to any new member-borne commission charges; and to use best endeavours to remove any such existing member-borne commission arrangements.

### **Duty relating to new commission arrangements**

8. The ban would require trustees of these schemes to ensure that any new contractual arrangement they enter into, on or after the date the ban is introduced, is free of member-borne commission charges. For example, if the trustee decides to change service provider, they will need to ensure that the new contractual arrangement does not contain any member-borne charges to cover the cost of commission payments to advisers.

### **Duty relating to existing commission arrangements**

9. The ban would also require trustees to use their best endeavours to ensure that arrangements entered into before the ban takes effect do not contain member-borne charges that are intended to cover the cost of commission payments to advisers. As trustees may be one step removed from the commission arrangement, which is typically agreed between the service provider and the adviser, they may not be aware of or have the authority to directly influence such arrangements. Their first step, therefore, in complying with this aspect of the ban would be to contact their service provider to establish whether the scheme contains member-borne commission.
10. Where the service provider confirms that member-borne commission is present, trustees will need to try to negotiate its removal. If the service provider does not agree to remove the existing member-borne commission arrangement, for example, because it may not be cost effective for them to do so, trustees should consider alternative arrangements. This may include, for example, changing service provider to one that does not use member-borne commission. In considering such changes, trustees will need to assess the value for money of any change to members. Where contractual barriers or early exit fees means such changes are not possible or do not represent value for money, trustees should notify The Pensions Regulator (TPR), outlining all the steps they have taken to try to remove member-borne commission. The section below on compliance outlines the steps TPR may consider taking in these circumstances.
11. The considerations and steps outlined above will take time so trustees would want to plan ahead to ensure they will be able to comply with the ban on existing commission arrangements when it comes into effect, or be able to demonstrate to TPR that despite their best endeavours they have been unable to remove the member-borne commission.



**Consultation Question 4:** Do you have any comments on our proposal that trustees ask service providers whether commission is present, and on the practical challenges they might face in meeting the requirement to remove existing member-borne commission arrangements?

## Option B

12. This option places a requirement on service providers preventing them from imposing a charge on members to recover the cost of commission payments to advisers in relation to any new commission arrangements; and to remove any such charges in relation to existing commission arrangements.
13. Trustees and employers should be aware whether the occupational scheme is being used as a qualifying scheme for automatic enrolment. It is possible that some providers of bundled occupational pension schemes may also have this information, but it would be helpful to understand whether all service providers would also have access to this information. We would welcome any views on this.

### **Duty relating to new commission arrangements**

14. The ban would prevent service providers from imposing a charge on members to recover the cost of commission payments to advisers in relation to any new contractual arrangement they enter into on or after the date the ban comes into force.

### **Duty relating to existing commission arrangements**

15. Service providers will also be required to remove any such existing member-borne commission arrangements, which may involve them ending or re-negotiating existing commission contracts with advisers.
16. Service providers should already be aware of whether they are or are not paying commission in respect of occupational pension schemes to which they are providing services. They should, therefore, be able to identify those schemes on which they will need to take action to remove commission in order to comply with the ban.
17. Service providers may need to communicate with advisers to inform them of the schemes that will be affected by the ban. The adviser may wish to negotiate an alternative fee-based arrangement with employers or members where members specifically agree to opt-in to such services.

**Consultation Question 5:** Do you have any comments on the practical challenges service providers may face in meeting their obligations under this option?

## Alternative Option

18. The Government recognises that there may be other viable options for banning member-borne commission in occupational pension schemes. One such alternative option may be placing requirements on both trustees and service providers preventing them from entering into new member-borne commission arrangements and requiring both to remove any existing member-borne commission arrangements. We would welcome views on whether there are any viable alternative options that should be considered.

## Who should be responsible for complying with the ban

19. As outlined above, Option A would place a duty on trustees, while Option B would place a duty on service providers.

20. DWP regulations have historically placed such duties on trustees in relation to occupational pension schemes. However, the nature of the typical commission arrangement means trustees may not be aware of or have the authority to directly influence the commission arrangement. Trustees may consequently be restricted in their ability to comply with the commission ban.

21. Service providers are aware of commission arrangements and should have the authority to end them. This suggests that they may be best placed to ensure effective implementation and compliance of the commission ban.

**Consultation Question 6:** Do you have any comments on who should have the duty to comply with the ban, and whether our definition of service provider should include any other person who is providing advice or services to the scheme and may be involved in a member-borne commission arrangement?

## Which members will be affected by the ban

22. Under the options outlined above, we intend that the commission ban will apply to the following members:

- any current employee of a given employer who has at least one employee using that scheme as a qualifying scheme for automatic enrolment; and

- any former employees of that employer who made a contribution to that scheme before the date the ban comes into effect, including employees who were not automatically enrolled into the scheme by that employer.
23. This approach is wider than that taken with the charge cap, but it reflects the findings of the OFT market study which found that members could pay commission without realising. Indeed, non-contributing members may be particularly unlikely to benefit from any advice or services paid for by commission. This approach is consistent with FCA rules banning commission in workplace personal pension schemes used for automatic enrolment.

**Consultation Question 7:** Do you have any comments on our proposed policy on whom the commission ban will protect?

## Member opt-in to adviser services

24. As set out in Chapter 2 as one of the key principles, we do not want the commission ban to prevent members from expressly choosing to access or pay for advice if they wish to do so. This is consistent with the approach taken by the charge cap and FCA rules banning commission in qualifying workplace personal pension schemes. By express agreement, we mean that members will have to make an active choice and advisers will not be able to use a tick box format for members to opt-in or out of advice or services.
25. In order to ensure maximum protection for members, we propose using a similar approach to that used with the charge cap in relation to the options outlined in this chapter. This will mean that where a member chooses to opt-in to and pay for an advisory service the agreement should be set out in writing (or other durable medium). Such an agreement:
- should not be a condition of joining or remaining a member of the scheme;
  - must clearly set out the exact amount that will be charged and what advice or service it relates to, how the charge will be recovered and the period over which it will be recovered;
  - must make clear if the charge cap will be exceeded;
  - cannot be used for advice or services the service provider is already legally obliged to provide to the member; and
  - must not cover any advice or services that the service provider is contracted to provide to the scheme which can include communications to members.
26. While we believe that members should have the opportunity to opt-in to adviser services, we would welcome views on how this should be paid for. For example, should payment be made via a fixed fee against the members' funds or contributions, or should it also include the facility to recover the fee by way of a percentage charge against the members' funds or contributions.

**Consultation Question 8:** Do you have any comments on:

- a) how fees for advice or services that the member opts-in to should be paid for;
- b) whether there are any services or types of advice that should not be covered by our proposed approach to member opt-in?

## Will the ban cover members accessing decumulation products

- 27. As outlined above, we intend that the ban will apply to workers of an employer who is using the occupational pension scheme as a qualifying scheme for automatic enrolment. The Government anticipates that some of these schemes are, or may in the future, offer flexible access decumulation products, for example, a type of drawdown product or an uncrystallised funds pension lump sum.
- 28. Under the proposed options, any member who chooses to access such products where these are offered by the qualifying occupational pension scheme will also be covered by the commission ban.
- 29. The Government believes that this is appropriate given that the ban will apply at scheme level and cover all members who are current or former employees of the employer who is using the scheme as a qualifying scheme for automatic enrolment, and across all the funds associated with that scheme.

**Consultation Question 9:** Do you have any comments on the proposal to extend the ban to members accessing decumulation products where these are offered in occupational schemes used for automatic enrolment?

## When will the ban take effect

- 30. The Government announced in March 2014 its intention to ban member-borne commission payments to advisers in qualifying workplace pension schemes from April 2016. This was subsequently confirmed in the October 2014 Command Paper and February 2015 Command Paper. We are aware that many providers have already removed commission arrangements from their qualifying schemes in anticipation of the ban; and that others are taking steps to remove these arrangements by April 2016.
- 31. As has already been outlined, designing regulations to implement the commission ban in occupational schemes requires consideration of a number of complex issues. For example, where trustees may be one step removed from the member-borne commission arrangement they will need time to negotiate the removal of

any existing commission arrangements. The Government, therefore, proposes a phased introduction to the implementation of the commission ban. This will involve:

- making regulations to ban new member-borne commission arrangements from 6 April 2016 (or the employer's staging date if later); and
- consulting on draft regulations to implement a ban on existing member-borne commission arrangements (that is those entered into before 6 April 2016) later in 2016.

**Consultation Question 10:** Do you have any comments on our proposed timing for introducing the commission ban?

## Compliance and enforcement

32. The FCA and TPR oversee the regulatory regime for workplace pensions. The FCA is primarily responsible for oversight of workplace personal pensions as well as a wide range of financial services. TPR is primarily responsible for regulating occupational pension schemes and automatic enrolment compliance. TPR also has primary responsibility for the conduct of trustees in trust-based schemes.

33. The Government intends that TPR would be responsible for enforcing the ban on member-borne commission in occupational pension schemes under all of the options presented in this chapter. TPR have a range of powers to help them meet their regulatory obligations, including those introduced by the Occupational Pension Schemes (Charges and Governance) Regulations 2015. Rather than seek to introduce new powers for TPR, we propose amending the aforementioned regulations, where this is needed, and relying on existing TPR powers elsewhere in pensions legislation in order for TPR to be able to enforce compliance with the commission ban.

## Regulatory approach under Option A

34. Under this option, trustees would be responsible for making sure that any new contractual arrangements they enter into, on or after the date the ban is introduced (or the employer's staging date if later), is free of member-borne commission charges. They will also need to confirm with TPR that they have met their obligations in relation to new and existing commission arrangements. Where trustees have been unable to remove existing commission arrangements despite their best endeavours they must notify TPR of this and what actions they have taken to try to have these arrangements removed.

35. TPR would be responsible for ensuring that trustees have complied with their obligation regarding new contractual arrangements. Where trustees advise that they have been unable to negotiate the removal of existing commission arrangements, TPR would consider whether the trustees have used their best

endeavours to meet their obligations under the ban. TPR may also consider whether there is any further action that they might take to support trustees, including requesting information from providers regarding commission arrangements in the scheme.

## **Regulatory approach under Option B**

36. The Government recognises that placing a duty on service providers under Option B will mean that TPR will be directly regulating bodies such as pension scheme providers and asset managers in the context of the commission ban. Regulatory oversight of these bodies has traditionally sat with FCA. However, TPR are already empowered to issue compliance notices to third parties where they have been deemed to cause a trustee to breach their duties, and TPR can also interact with pension providers in relation to administration issues.
37. Both regulators already work together to ensure consistency in the regulation of workplace pension schemes and have processes in place to manage any overlaps in regulatory structure, and formal information sharing processes to help address any issues or concerns that have been identified. They have also set up a joint risk group to look at shared risk and are able to undertake joint enforcement action where there is trustee involvement.
38. Accordingly, under this option TPR would be responsible for ensuring that service providers comply with their duty. In order to ensure that there is a mechanism through which TPR can identify non-compliance, the Government proposes that trustees would be responsible for checking with service providers whether or not there is a commission arrangement in place in the scheme. Trustees would, as part of their existing requirements to assess charges and costs, ask their service provider whether or not there is a commission arrangement within the scheme and notify TPR. Should trustees not receive the information they require from service providers they should notify TPR of this. TPR will then decide whether to take any action, including requesting the information directly from service providers regarding commission arrangements in the scheme, and issuing compliance notices.

## **How should trustees notify TPR**

39. All the options require trustees to inform TPR whether or not there is a commission arrangement in the scheme they are managing or if they have not been able to obtain information from service providers. Trustees are already required to assess whether the costs and charges borne by members represent value for money; and to confirm via the scheme return that they are compliant with the charge controls. The Government proposes that trustees also use the scheme return to notify TPR whether or not their schemes are commission free and, in relation to Option A, what action they have taken to remove existing member-borne commission arrangements. This would allow TPR to decide if they are content that trustees have used best endeavours to try to get the information

they were required to obtain.

**Consultation Question 11:** Do you have any comments on our proposed approach to compliance and enforcement under these options, including the role of trustees?

## Further areas for consultation

40. There are also a number of further areas in which the Government would welcome views.

### Non-monetary benefits

41. The FCA commission ban also covers non-monetary based commission arrangements. However, it is not clear whether such non-monetary benefits exist or are frequently used in commission arrangements in occupational pension schemes used for automatic enrolment; and if they do in what form such non-monetary benefits might take.

**Consultation Question 12:** Do you have any comments on whether non-monetary benefits are a feature of commission arrangements and if so what form they commonly take?

### Impact on advisers

42. None of the options presented in this consultation will place a legal duty or requirement on advisers. Nonetheless, the Government is interested to understand the level and scale of the impact on advisers from the options presented in this consultation, with particular regard to the ban on existing member-borne commission arrangements in occupational schemes used for automatic enrolment.

**Consultation Question 13:** Do you have any comments regarding any costs or burdens that may be imposed on advisers or other parties, such as service providers, under the options that have been outlined, with particular regard to existing member-borne commission arrangements?

### Member-borne charges following the ban

43. The Government does not currently intend to prevent service providers from using member-borne charges to recoup initial commission that they have already paid before the ban comes into effect, where this can be achieved within the charge cap if applicable. This is consistent with the approach taken by the FCA in relation

to its ban on commission in workplace personal pensions used for automatic enrolment.

44. Additionally, the Government does not propose regulating to require service providers to reduce charges correspondingly when they terminate on-going commission arrangements. This is also consistent with the approach taken by FCA in their commission ban. We expect service providers to consider the interests of scheme members when determining whether or not to reduce charge levels. The Government intends to monitor the response of providers following the ban and will consider whether further action should be taken if members are not benefiting from the ban on commission charging in occupational schemes used for automatic enrolment.

**Consultation Question 14:** Do you have any comments on our proposed approach to member-borne charges after the ban is introduced; and what steps service providers can take to ensure that member-borne charges, intended to cover the cost of initial commission paid before the ban comes into effect, stop as soon as this cost is recovered?

**Consultation Question 15:** Do you have any other comments on any part of this consultation not covered by previous questions?



# **Consultation Questions**

1. Do you have any comments regarding the proposed scope of the ban?
2. Do you have any comments on how organisations that offer the “integrated” services described above are set up, and any potential challenges in ensuring that such organisations are subject to the ban on member-borne commission in occupational pension schemes?
3. Do you have any comments on:
  - a) whether our understanding of adviser remuneration reflects how commission is typically paid in occupational schemes used for automatic enrolment;
  - b) whether there are any other examples of commission payment models that are used in these schemes and how common these are;
  - c) the prevalence of initial commission arrangements in occupational pension schemes used for automatic enrolment?
4. Do you have any comments on our proposal that trustees ask service providers whether commission is present, and on the practical challenges they might face in meeting the requirement to remove existing member-borne commission arrangements?
5. Do you have any comments on the practical challenges service providers may face in meeting their obligations under this option?
6. Do you have any comments on who should have the duty to comply with the ban, and whether our definition of service provider should include any other person who is providing advice or services to the scheme and may be involved in a member-borne commission arrangement?
7. Do you have any comments on our proposed policy on whom the commission ban will protect?
8. Do you have any comments on:
  - a) how fees for advice or services that the member opts-in to should be paid for;
  - b) whether there are any services or types of advice that should not be covered by our proposed approach to member opt-in?
9. Do you have any comments on the proposal to extend the ban to members accessing decumulation products where these are offered in occupational schemes used for automatic enrolment?
10. Do you have any comments on our proposed timing for introducing the commission ban?

11. Do you have any comments on our proposed approach to compliance and enforcement under these options, including the role of trustees?
12. Do you have any comments on whether non-monetary benefits are a feature of commission arrangements and if so what form they commonly take?
13. Do you have any comments regarding any costs or burdens that may be imposed on advisers or other parties, such as service providers, under the options that have been outlined, with particular regard to existing member-borne commission arrangements?
14. Do you have any comments on our proposed approach to member-borne charges after the ban is introduced; and what steps service providers can take to ensure that member-borne charges, intended to cover the cost of initial commission paid before the ban comes into effect, stop as soon as this cost is recovered?
15. Do you have any other comments on any part of this consultation not covered by previous questions?

## Glossary

Active member	A member of a pension scheme who is at present accruing benefits under that scheme.
Active member discount (AMD)	A charge structure whereby active members of a scheme are charged a lower amount than they would be if they were not contributing.
Additional Voluntary Contributions (AVC)	An extra pension contribution which a member may choose to make to increase their retirement income, often within a final or average salary scheme.
Administration	The day to day running of a pension scheme. This may include collecting contributions and payment of benefits.
Adviser	A professional who renders advice services to clients.
Annual management charge (AMC)	An annual charge levied on the value of the scheme fund. It may cover a combination of the sales, administration and fund management costs of the fund.
Asset Manager	An individual (or company) to whom the management of all or part of a scheme's assets is delegated.
Automatic enrolment	Employers are required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.

Bundled schemes	Where the employer or trustees procure administration and investment services through a single pension provider.
Commission	A payment, which may be either an upfront or on-going fee (often called trail commission) or both, for advice services agreed between a scheme provider and an adviser. The cost is recouped through member-borne charges.
Consultancy charging	An upfront fee for advice services agreed between an employer and an adviser. The cost is recouped through member-borne charges.
Contributions	The money paid by members and employers to the pension scheme.
Decumulation	The process of converting pension savings into a retirement income.
Default arrangement	This generally means the investment vehicles that are selected automatically for a member joining a pension scheme, unless that member selects an alternative investment strategy.
Defined Benefit (DB)	A scheme in which the benefits are defined in the scheme rules and accrue independently of the contributions payable and investment returns.
Defined Contribution (DC)	A defined contribution scheme's benefits are based on how much the member and employer pay into the scheme, and also on the performance of the investments made with that money. The Pension Schemes Act 2015 defines a Defined Contribution Scheme as one in which there are no pension promises in relation to any of the retirement benefits that may be provided to members.
Financial Conduct Authority (FCA)	The FCA is responsible for regulating the standards of conduct in retail and wholesale,

	financial markets and for supervising the infrastructure that supports those markets.
Investment Strategy	The rules and procedures for the selection of the range of investment products for a pension scheme.
Master trust	An occupational trust-based pension scheme established by declaration of trust which is or has been promoted to provide benefits to members who are staff of employers which are not connected and where each employer group is not included in a separate section with its own trustees. For this purpose, employers are connected if they are part of the same group of companies (including partially owned subsidiaries and joint ventures).
Member	An individual who has contributed and/or continues to contribute.
Member-borne deductions	All deductions paid by members of pension schemes to the pension provider or another third party.
Money purchase benefits	Where the rate or amount of the benefit is based on the contributions made by or on behalf of the member and investment returns, less charges. The benefit is calculated solely by reference to assets which must necessarily suffice for the purposes of its provision to or in respect of the member – i.e. there is no promise which can give rise to a deficit in the scheme.
Money purchase scheme	Pension scheme where all the benefits are money purchase benefits.
Non-contributing members	In defined contribution schemes, this is someone who no longer contributes to the scheme but is not yet a beneficiary of that scheme. In some contract-based arrangements the member may be reclassified as a member of an Individual

	Personal Pension rather than a Group Personal Pension.
Occupational pension	A pension which is provided via a person's employment, normally taking the form of a trust arrangement.
Pension scheme	The arrangement by which an employer and, usually, an employee pay into a fund that is invested to provide the employee with a retirement benefit in the form of an income or a cash amount, depending on the scheme design.
Retail Distribution Review (RDR)	On 1 January 2013, the RDR introduced new rules from the then FSA on how financial advisory companies could operate. These rules included a stipulation that advisers are not able to take commission as a form of remuneration but instead will have to quote a fee for any advice given.
The Pensions Regulator (TPR)	TPR regulates occupational pension schemes in the UK.
Trustees	A member of the board of trustees responsible for the management, administration and investment of the pension assets.
Trust based schemes	A scheme that is managed by a board of trustees. The trustees have full responsibility for the management, administration and investment of the scheme. The trustees' fiduciary duty is to run the scheme according to the trust deed and rules which may have been setup by, for example, the employer – and to act in the interests of members and while they can delegate tasks to various specialists, such as investment managers, the responsibility remains with the trustee.
Unbundled schemes	Where the trustees procure investment management or administration services directly from separate providers.
Workplace pensions	A pension provided by an employer.