Guernsey Financial Services Commission

Review of the Pension Transfer Landscape in the Bailiwick

Thematic Review 2021-2022

Executive summary

During 2021 and Q1 2022, the Commission undertook a Thematic Review in order to gain a better understanding of the pension transfer landscape within the Bailiwick for the period 1 January 2019 to 30 June 2021. The Commission's objectives in undertaking the Thematic Review were to:

- Understand the scale and frequency of pension transfers;
- Gain an understanding of licensees conduct in relation to pension transfers, including the duration of transfers, approval and rejection regimes, the basis for calculating fees and to review any resulting complaints;
- Educate both licensees and pension members as to the Commission's expectations in these areas; and
- Ascertain if any future amendments to The Pension Scheme and Gratuity Scheme Rules and Guidance, 2021 would be beneficial.

What did the Commission find?

A) Consolidation of assets was the main reason licensees cited for transfer requests.
Various reasons were provided by licensees for the rationale behind a pension member transferring their assets, with the consolidation of assets and relocation of the pension member the most commonly cited factors.

B) The number of transfer requests remained consistent over the two-and-a-half-year analysis period.
The number of pension transfer requests has remained consistent throughout the reporting period and the majority of transfers occurred within Guernsey. The United Kingdom was the second most popular destination.

C) The majority of transfer requests were approved, and licensees generally considered the associated risks.
1133 (95.1%) of the total pension transfer requests were approved. Licensees' considerations and explanations for the risks associated with pension transfers differed in comprehensiveness but were generally effective.

D) The average number of days taken to approve/reject a pension transfer varied.
78% of rejected transfers and 23% of approved transfers took more than 60 days to complete. There is large variability in the length of time taken to reach a decision on a transfer request.

E) 68% of pension transfers were charged a fixed fee.
There is a large spread in fees being charged for a transfer. 68% of the fees were charged on a fixed fee basis, 28% were not charged a separate explicit fee, 3% were a percentage-based fee, and 1% were a time spent fee. The Commission expects licensees to be charging fees commensurate to work undertaken and to ensure that those fees are not creating a barrier to members transferring out of a scheme.

F) Pension transfers did not result in a large number of complaints.
Although only 2% (22) of transfer requests resulted in a complaint by the member, Trustees should continue to ensure that transfers are processed promptly and accurately and should not be unreasonably delayed. Further, Trustees should continue to consider the risks associated with pension transfers and ensure the members interest is treated as paramount.

The current pension transfer requirements are viewed as appropriate.
The Thematic respondents acknowledged that the requirements within the pension transfers section of The Pension Scheme and Gratuity Scheme Rules and Guidance, 2021 are appropriate and not unnecessarily onerous.

What can Scheme Members expect?

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2020 ("the Law") ensures that the formation, management or administration of pension schemes or gratuity schemes, and the provision of advice in relation to them, is a restricted regulated activity.

Pension transfers are not necessarily straightforward and Guernsey pensions providers, Trustees and Scheme Administrators, have an obligation to act with due skill, care and diligence to fulfil their responsibilities to the pension scheme members.

The Commission expects anyone undertaking this regulated activity to process transfer requests promptly, accurately, without unreasonable delays and without any unreasonable conditions imposed on Scheme Members who request a transfer. If a transfer request is not completed within 60 days from the date the provider received all reasonable information and documentation, the Scheme Member should be provided with an explanation regarding the reasons for the delay.

Careful consideration should be given to the risks associated with pension transfers, several of which are potentially significant and can undermine future pension value.

Data Accuracy & Quality Notice

The Commission wishes to remind licensees of the importance of submitting accurate data. Disappointingly, during the data gathering exercise of this Thematic Review, the Commission was presented with some form of inaccurate or poor-quality data from more than 50% of participants and we will be providing targeted feedback to these firms. Examples included but are not limited to:

- Numerous licensees inserted a date in the date field then subsequently advised that it was inaccurate and had to resubmit the data;
- One licensee advised that some of its pension members had incurred percentage-based transfer fees then advised the Commission of their error and had to resubmit the data to reflect time spent fees; and
- More than one licensee left a cell blank where a rationale had been requested.

For the Commission to carry out its role effectively it is vital that accurate and timely information is received from licensees. This can be seen in the Thematic review conducted in 2018 in the Insurance Sector highlighting the importance of submitting accurate data (Report on the 2018 Thematic Review of Insurer Annual Returns_0.pdf (gfsc.gg)). The submission of inaccurate data to the Commission can lead to significant issues in the supervision, monitoring and interaction with sectors and firms and can lead to focusing resources away from key risk areas, it can also reduce our ability to accurately identify issues and risks in a timely manner.

Contents

Background

Thematic Reviews are used by the Commission as a tool to gather information on specific aspects of the Bailiwick financial services sector. The reviews also provide a means by which the Commission can share observations with industry on both good practice and areas for improvement and engage with a wide selection of licensees.

The Commission has received complaints from members of pension schemes relating to pension transfers and in particular delays regarding the processing of transfers. In some instances, Fiduciary Licensees claimed that delays or rejection of transfers were due to concerns regarding the receiving scheme and the motives of advisers involved. Clearly an inherent conflict of interest exists in that the pension provider responsible for making the transfer will be losing business, and therefore money, by making the transfer. The Commission wished to assess the detriment to scheme members as well as the consequential risk of damaging the reputation of the Bailiwick.

Bailiwick Pension Schemes

Guernsey's supervisory regime ensures that the formation, management or administration of Pension Schemes ("Schemes"), and the provision of advice in relation to them, is a regulated activity. Regulation is provided for by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2020[1].

Details of current licensed pension scheme and gratuity scheme providers ("Providers") are available on the Commission's website[2]. The details of the supervisory regime are set out in The Pension Scheme and Gratuity Scheme Rules and Guidance 2021: Acting with Integrity[3] ("the Rules").

Providers are regulated if they carry out a restricted regulated activity by way of business in or from within the Bailiwick, typically the providers are either a regulated Trustee or a regulated administrator ("Scheme Administrator"). This means that "lay" trustees are outside the scope of pension regulation since they are not acting as trustees by way of business.

Schemes are within the scope of regulation if they have a regulated Provider and meet the definition of a pension scheme as set out in the Law.

The regulation of Schemes extends to governance and compliance aspects and includes provisions to ensure that members are treated fairly, as set out in the Rules. The supervisory regime is exercised through the regulation of the regulated Providers, which are required to follow the provisions of the Rules. All Schemes within the scope of the Law are required to be registered with the Commission by the regulated Provider, which is also required to make statistical returns and annual returns in relation to each such Scheme.

The registration of Schemes with the Commission is not an approval regime and is separate to the approval or recognition process for Schemes by the Guernsey Revenue Service, which imposes separate requirements as a condition of approval or recognition. The sector is home to numerous international and local firms providing international corporate and group services.

Scope

[1] Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2020 [Accessed 24 March 2022]
[2] Regulated Entities [Accessed 24 March 2022]
[3] Legislation and Guidance [Accessed 24 March 2022]

Guernsey based pension providers play host to 2,135[4] pension schemes and gratuity schemes for 109,538[5] members holding £11.25bn assets. 96% of schemes are Defined Contribution.

The firms selected to complete the survey were the top 12 pension providers ranked by total membership. To summarise, this Thematic Review sampled licensees providing services to 94% of all pension members invested in Bailiwick pension schemes.

Approach

The Thematic Review consisted of three stages:

1. An initial information gathering stage. A survey was sent to twelve pension providers to understand the volume of pension transfer requests received over the analysis period including the time taken to complete the transfer, the fees charged and whether the transfer request had resulted in a complaint. This was followed up by targeted information gathering requests.

2. Onsite visits were carried out to four pension providers to meet with Trustees and Scheme Administrators and conduct file reviews.

3. Meetings were held with other stakeholders involved in the pension sector in Guernsey including discussions with the Channel Islands Financial Ombudsman to understand their experience in this area.

A desk-based review of the information provided in response to the initial requests was undertaken and this was used to inform the discussions and file reviews whilst onsite at the pension providers.

[4] Active Schemes per Q2 2021 Fiduciary – Pension Scheme or Gratuity Scheme Quarterly Form 126 (Form 126 retired thereafter and replaced by an annual form 128 as at 30 June each year)

[5] Scheme Members per Q2 2021 Fiduciary – Pension Scheme or Gratuity Scheme Quarterly Return (Form 126 retired thereafter and replaced by an annual form 128 as at 30 June each year)

Analysis

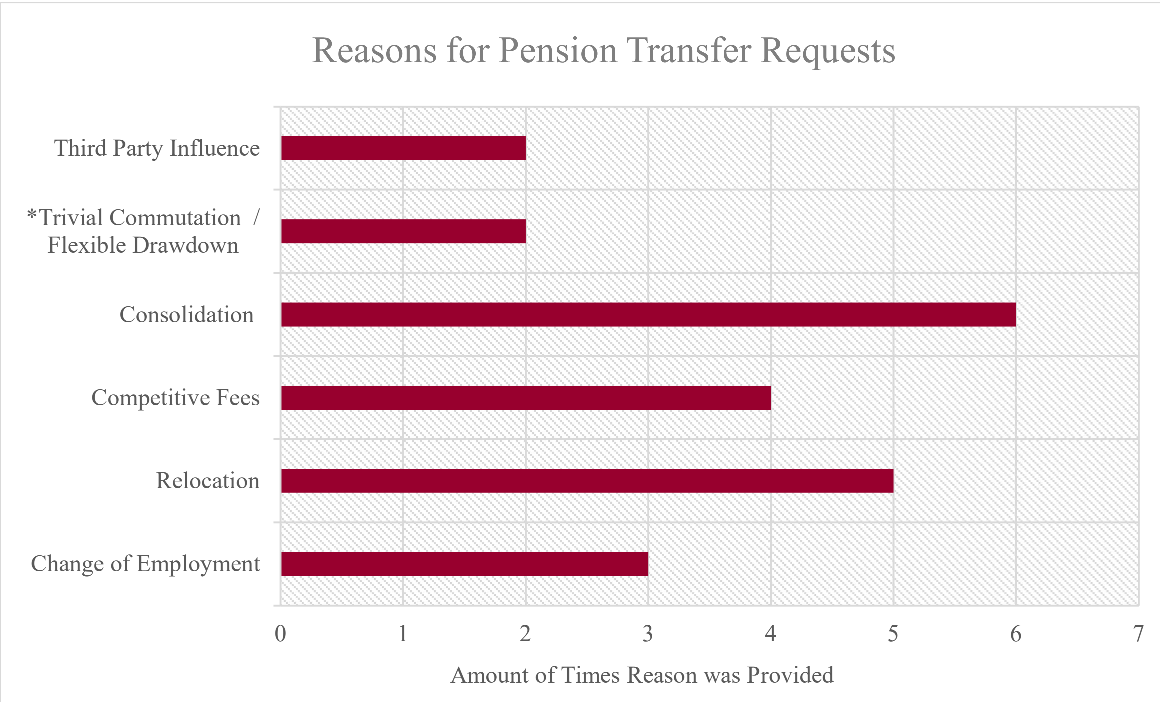
Key finding A: Consolidation of assets was the main reason licensees cited for transfer requests.

Eleven licensees were asked what they assess as being the main reasons that members request to transfer their pension assets, with results illustrated in the graph below. This graph reflects the top two or three reasons cited per licensee and does not seek to illustrate the reason for each transfer request made in the analysis period.

Pension members consolidating their pension assets into one structure was cited as the main reason. This was followed by the relocation of members to another jurisdiction which meant that the current scheme would potentially no longer provide the advantages it may once have.

Understanding the rationale for a member requesting a pension transfer is an important initial step in considering whether the transfer is in the best interests of the member.

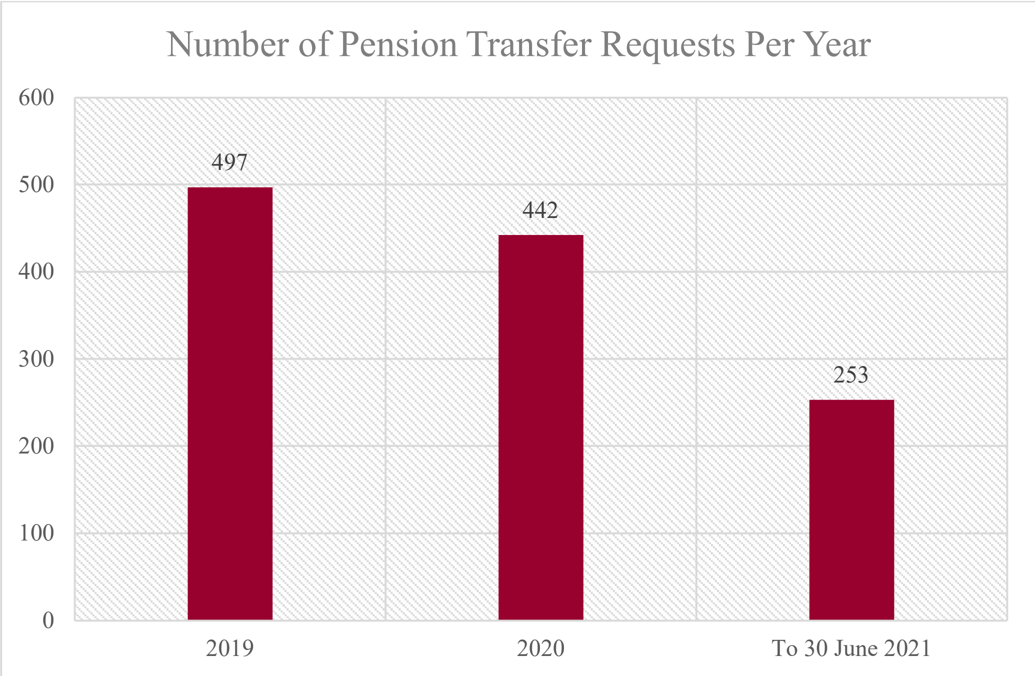
The Commission was encouraged to hear from scheme providers that third party influence from some self-motivated financial advisors was not as common as it had once been. Licensees are reminded to conduct appropriate due diligence on transferring schemes to ensure they are in the interests of the member.



*Trivial Commutation is where a pension member may commute their pension or take a small pot lump sum as long as they comply with current legislation and individual scheme arrangements. Members should consult their Scheme Provider to ascertain whether this option is available and/or in their best interests.

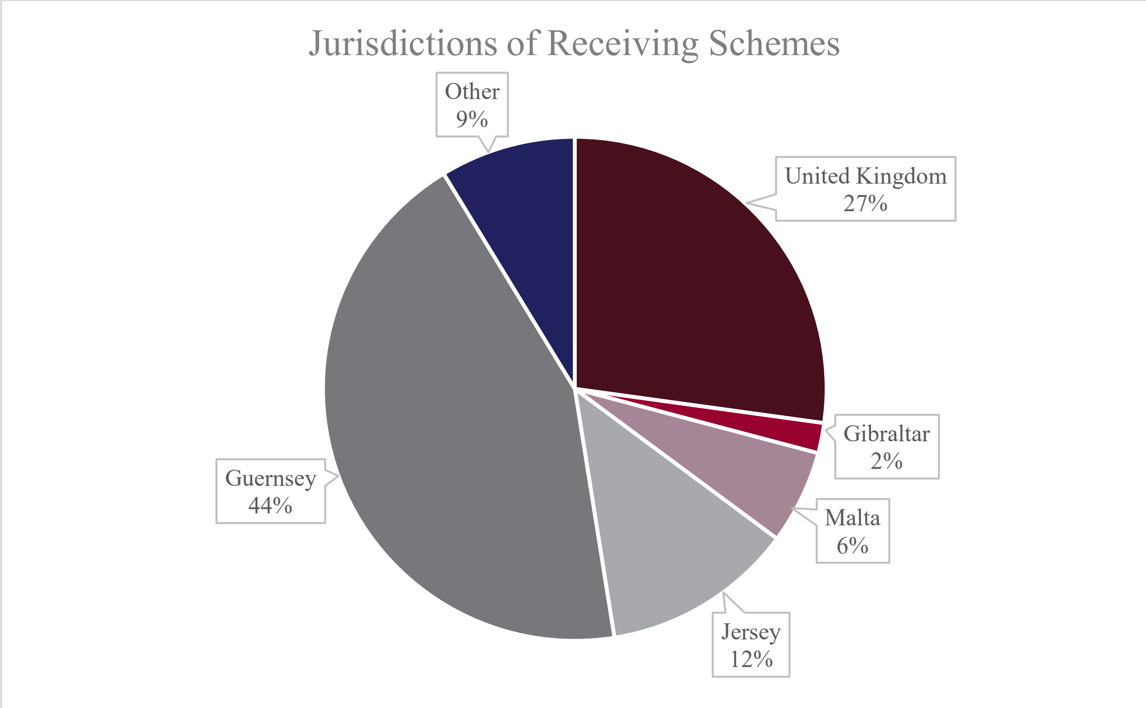
Key Finding B: The number of transfer requests remained constant over the two-and-a-half-year analysis period.

The number of pensions transfers per year is shown in the graph below. In total over the two-and-a-half-year period 1192 pension transfer requests were received. In 2019, 2020 and the first six months of 2021 the number of pension transfer requests were 497, 442 and 253 respectively. From these numbers it appears that the number of pension transfer requests per year remains relatively consistent, adjusting for the 6-month analysis period in 2021.



Most of the pension transfer requests were for type A schemes which are those approved by the Director of the Revenue Service under section S150, S154A, S157A & S157E of the Income Tax Law.

The graph below shows the jurisdictions where the pension scheme/assets were requested to be transferred to. 44 % of the pension schemes were requested to be transferred within Guernsey, followed by 27% requested to be transferred to the United Kingdom ("UK"). The jurisdiction titled 'other' is made up of 17 jurisdictions where 20 or less pension schemes were requested to be transferred.



Key Finding C: The majority of transfer requests were approved, and licensees generally considered the associated risks.

Out of the 1192 pension transfer requests made, 1133 of them were approved. This accounts for 95.1 % of the total pension transfer requests. 4.8 % of pension transfer requests were rejected and there was 1 request that was still in progress as at 30 June 2021.

Overall, this shows that providers are generally amenable to transfer requests. The top 3 reasons for a pension provider rejecting, or not proceeding with, a transfer were: 1. The member withdrew the request 2. The Trustee considered the advice received by the pension member was misleading and 3. The receiving scheme did not meet the criteria to receive the pension members assets.

Risks Associated with Transfers

The Pension Rules provide guidance on the risks associated with transfers (see Appendix I). The guidance also explains that when dealing with a transfer request licensees should consider conducting due diligence on the receiving scheme and provider. Whilst conducting file reviews for Defined Contribution schemes, there was evidence of licensees undertaking both these considerations.

Case Study

As part of the internal review process for a request by a pension member, the licensee undertook careful consideration of the potential significant risks to the member. The rationale and jurisdiction to which the proposed transfer was to be made were clearly recorded on the transfer request forms which formed part of robust controls and procedures to protect the member. The cost of transferring the scheme assets as well as an examination of the receiving scheme's fees was performed to ensure the member was apprised of total costs and was not liable to an increased level of fees should the transfer complete. The tax implications were considered and documented alongside the suitability of the receiving scheme to accept the assets.

A Defined Benefit scheme transfer file reviewed as part of this Thematic did not highlight any immediate concerns. Pension transfers for Defined Benefit schemes are far less commonplace as those for Defined Contribution schemes which account for 96% of all Bailiwick pension schemes.

GOOD PRACTICE

There are several potentially significant risks to scheme members that should be considered when a transfer request is received. The Commission's expectation is that licensees consider the context of any transfer request and raise any risks relevant to the transfer with the member. Examples of some of these risks have been outlined in the Guidance Note within section 2.12 of the Rules. The following rationale, identified during this Thematic Review, for a rejection of a request to transfer a pension member's assets shows careful consideration: *'Financial adviser recommending the transfer was the Member's brother-in-law who was conflicted and would also receive 3% commission. Proposed underlying investments would lock Member in for 6 years, which at age 75 would not be practical'.*

AREA FOR IMPROVEMENT

The Guidance Note in section 2.12 of the Rules explains that a transfer has the potential to make the transferor liable for an increased level of fees and that the proposed underlying investments may not be suitable. There were cases amongst licensees whereby no consideration had been given to either of these significant risks. The Commission's expectations are that if licensees do not adopt the measures set out in the Guidance Note that they will demonstrate alternative measures to achieve compliance. Licensees are reminded of their fiduciary duty as a Trustee to ensure that the interests of beneficiaries are paramount[6].

AREA FOR IMPROVEMENT

The Commission reminds licensees of the importance of maintaining complete documentation. Whilst reviewing files there were instances of documentation not clearly capturing the breadth of consideration required by the Trustees. However, on discussion with the firms it became apparent that these considerations had in fact been made. The Commission considers that where Trustees need to demonstrate that they have acted in the best interests of their members they should ensure that their judgement and scrutiny of a decision is recorded, whether that be in minutes, correspondence or alternative documentation formats.

Key Finding D: The average number of days taken to approve/reject a pension transfer varied.

Section 2.12 (3)(b) of the Pension Rules and Guidance, 2021 explains that licensees must process any valid transfer request within a reasonable time following the date the licensee has received all the information and documentation it reasonably requires.

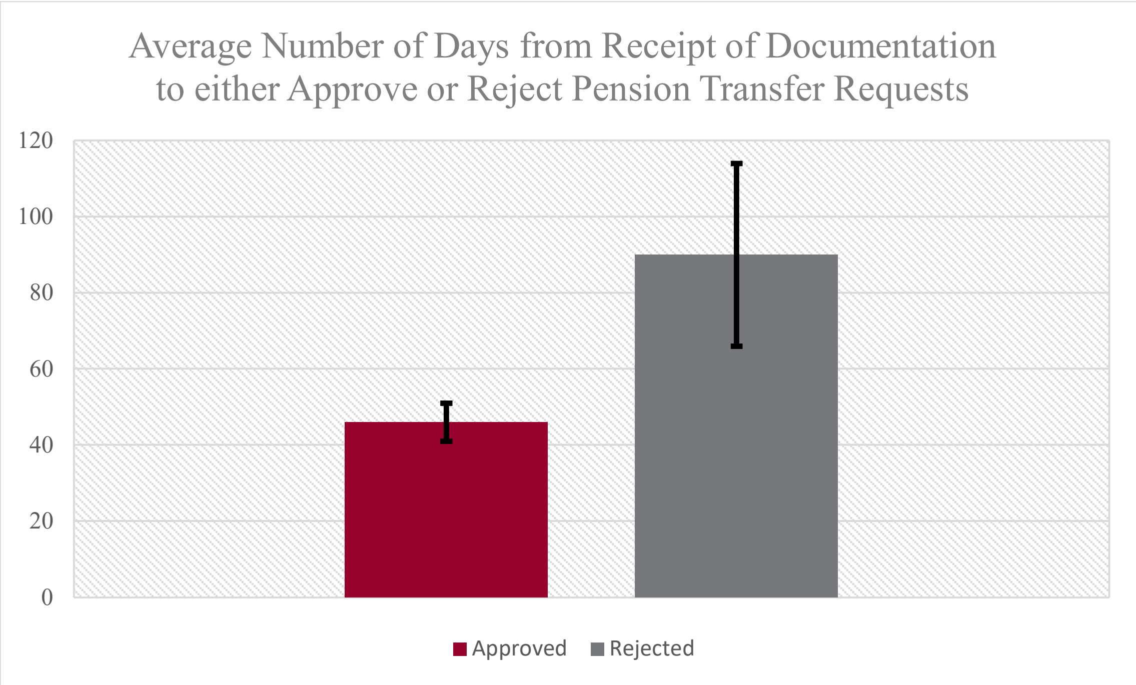
The graph below shows the average number of days taken to approve or reject a pension transfer. The graph includes error bars which represent the standard error of the mean. The standard error of the mean indicates the uncertainty of the reported sample average in terms of how representative it is of the population average. Small error bars in this case suggest that the reported average is a more precise reflection of the population average.

Overall, the pension providers took an average of 46 ± 5 days to approve a transfer and 90 ± 24 days to reject a transfer request; 71% of rejected transfers and 23% of approved transfers took more than

[6] Fid Rules and Guidance.pdf (gfsc.gg) Section 3.2.1(1)(a) [Accessed 14 March 2022]

60 days to complete.

Section 2.12(3)(d) of the Pension Rules and Guidance, 2021 states that scheme members must be provided with an explanation regarding the reasons for the delay where the requested transfer is not completed within 60 days following the date on which the licensee received all the information and documentation it reasonably required to do so.



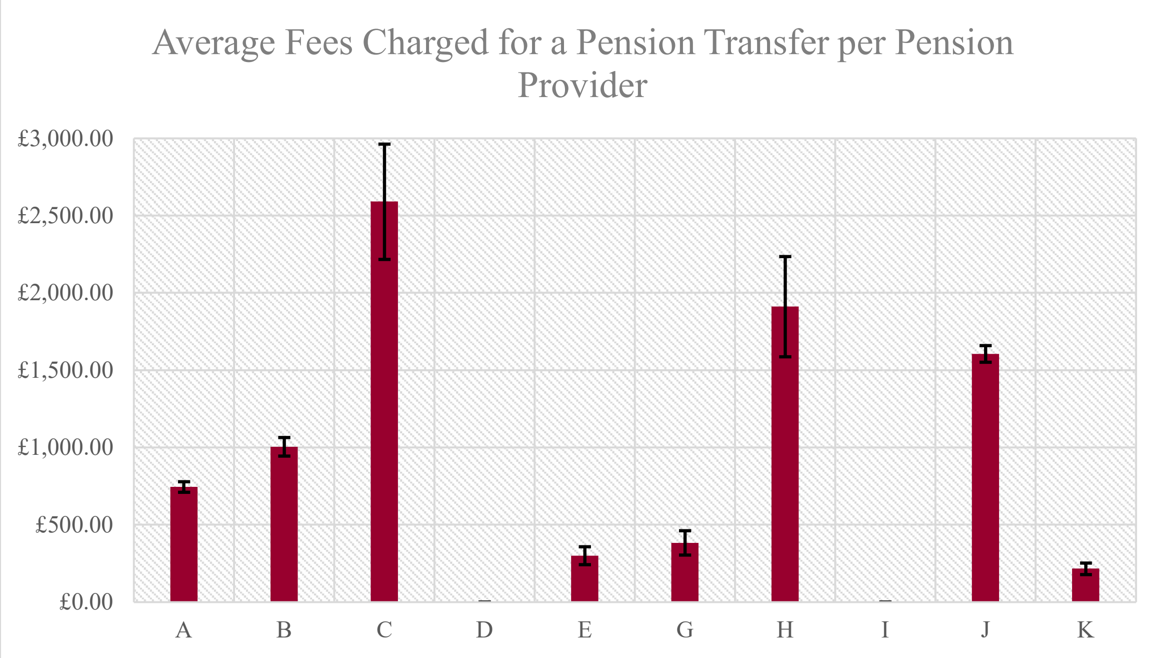
Legitimate reasons were noted for the 60 days being breached. These included complex transfers due to schemes holding non-standard assets or delays in divestment of assets whilst waiting for the market to correct itself after a period of volatility to minimise losses. However, rationales were also provided that cited internal administration delays at the licensee. Where this is the case, the Commission would expect the member to have been notified and a solution provided which would not adversely impact the member.

GOOD PRACTICE

Whilst conducting file reviews the Commission saw a number of instances whereby rule 2.12(3)(d) was referenced on checklists for completion by administrators, but this was not present at all firms. A cause of frustration amongst pension members is not being kept apprised of the transfer process and the time taken; ensuring that members are provided with an explanation where there is a delay is important good practice.

Key Finding E: 68% of pension transfers were charged a fixed fee.

The average fee charged for a pension transfer per licensee is shown below. However, the results vary materially, and **the Commission reminds firms of the inherent conflict of interest in charging a fee that would potentially result in a pension member remaining in a scheme that is no longer appropriate for their circumstances to avoid paying an expensive transfer fee.**



It should be noted that these average pension transfer fees range across the breadth of pension products offered in the Bailiwick. The Commission is mindful that different pension products (for example multi member occupational schemes or individual RATS) and different underlying investments will incur varying transfer fees.

AREA FOR IMPROVEMENT

One licensee advised that as Trustee it does not consider that it has influence over the amount charged for a pension transfer and is not involved in determining the fee as this is determined by the administrator of the relevant pension scheme which is a separate entity. The Commission is concerned, in this regard, that licensees are not ensuring that they meet their duty in ensuring the best interests of the pension member. The Commission would expect Trustees to undertake a reasonableness test when presented with the fee chargeable and to consider challenging this amount if it does not appear to be in the best interest of the pension member.

Case Study

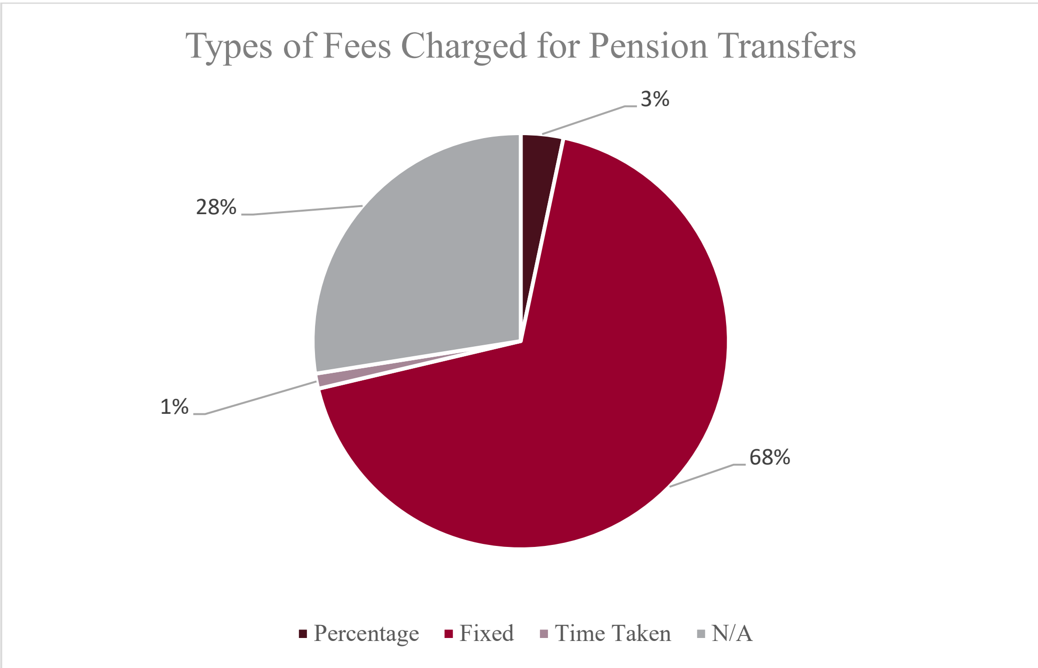
The Commission identified one licensee selected for review as an outlier amongst its peers in terms of its charging basis. At this particular licensee, 38% of transfer requests incurred a percentage-based fee. The Commission is concerned that a pension member with high-value pension assets may be charged a larger fee where there is no complexity in the structure and the work undertaken to transfer the assets is not relative to the fee being charged. The Commission's expectation is that a pension transfer fee should be charged commensurate to the work undertaken.

The Pension Scheme and Gratuity Scheme Rules and Guidance 2021, state in section 2.10(2) *"Where charges are unusual, outside, or potentially outside, current market practice, either as to the amount or the basis of the calculation of the amount, the licensee shall make this known immediately to the Scheme Member."* The Commission recommends that licensees charging a percentage-based fee consider whether this is potentially outside current market practice as to the basis of the calculation and make this known to the Scheme Member. The Commission will be monitoring charging structures as part of its ongoing supervision of licensees.

GOOD PRACTICE

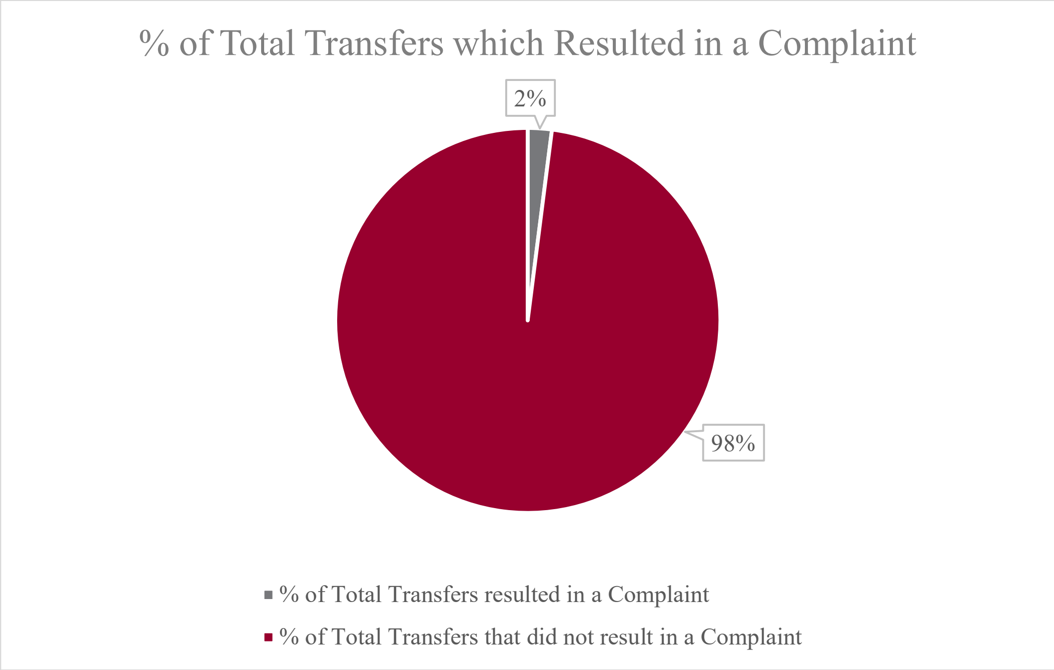
A number of licensees showed good practice in detailing the fees to be charged for a pension transfer in material such as brochures and forms which were readily available to existing and future members. The Commission is encouraged that licensees are being open and transparent with their pension members and adhering to section 3.4(2)(c) of The Fiduciary Rules and Guidance, 2021.

The graph below shows the types of fees charged for a pension transfer. 68% of the fees charged for a pension transfer were fixed fees, 3% were percentage fee based, 1% were time spent fee based, and 28 % were 'N/A' which accounted for a mixture of either pension transfers that were not charged a fee at the point of transfer (in most instances this would be as the member was part of an employer sponsored occupational pension scheme whereby the sponsor would pay the full administration cost of the plan) or where a pension transfer was rejected and no fee charged.



Key Finding F: Pension transfers did not result in a large number of complaints.

As shown in the graph below only 2 % of the total pension transfer requests resulted in a complaint which was recorded by the licensee. In numbers this equates to 22 pension requests out of a total of 1192. Of the 22 complaints made, 18 % of them related to pension transfer requests that had been rejected.



Further analysis was performed to provide insight into whether complaints were correlated with the time taken for licensees to approve or reject a pension request. Of the 22 pension transfers that resulted in a complaint:

- 18 of them were approved and only one of those approvals took more than 60 days to be reached after receipt of all information and documentation.
- 4 of them were rejected and none of those rejections took more than 60 days to be reached.

It could, therefore, be concluded that most pension transfer requests resulting in a complaint were processed within a reasonable time frame and that there does not appear to be a correlation between complaints and time taken for a licensee to approve or reject the request.

Further to this, analysis of the correlation between the number of transfers and the number of complaints on a licensee-by-licensee basis was performed. Where there were outliers identified, further investigation as to the nature of the complaint was undertaken, and proportionate action taken to address any risk sitting outside the Commission's appetite. Licensees are reminded that complaints against pension providers cause a reputational risk to the Bailiwick due to the nature of the potentially vulnerable retail clients invested in these products.

The Commission does not make any definitive judgements as to the licensees' complaints processes and procedures as this was outside of the scope of this Thematic Review. However, the Commission does consider that a review of licensees' complaints handling processes and procedures could be an area for further exploration at a future date.

Conclusion

Pension transfers appear to be regular practice within the Bailiwick particularly as pension members favour consolidating their pension assets. There are several potentially significant risks to scheme members that should be considered when a transfer request is received. Licensees should consider the context of any transfer request and raise any risks relevant to the transfer with the member, bearing in mind that some of the risks associated with a transfer request from a Scheme Member in a Defined Contribution Scheme will differ from those faced by a Scheme Member proposing to transfer out of a Defined Benefit Scheme. Where there is a delay to a transfer, the Commission would expect the member to have been notified and a solution provided which would not adversely impact the member.

Fees charged for pension transfers varied and in most instances were charged on a fixed fee basis. Pension transfers charged on a percentage-based fee were outside of current market practice. The Commission expects pension transfer fees to be charged commensurate to the work undertaken and that those fees should not create a barrier to members transferring out of a scheme.

Pension transfers are not necessarily straightforward and Guernsey pensions providers, Trustees and Scheme Administrators, have an obligation to act with due skill, care and diligence to fulfil their responsibilities to the pension scheme members. This may not always be aligned with pension scheme members' desires. The Commission expects pension providers to take care not to privilege their commercial interests over their fiduciary duties or their legal obligations to adhere to the Bailiwick's pension regulations.

Glossary of Terms

Commission	The Guernsey Financial Services Commission
CIFO	Channel Islands Financial Ombudsman
Law Courts	Courts of Guernsey
Pension Scheme	Being a fund, contract, scheme or trust as described in paragraph (a), (b) or (c) of the definition of "pension scheme" in the Law.
The Law	The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020
The Pension Rules or The Rules	The Pension Scheme and Gratuity Scheme Rules and Guidance, 2021
Thematic Review	Review of the Pension Transfer Landscape in the Bailiwick

Appendix I

The Guidance Note included within section 2.12 of The Pension Scheme and Gratuity Scheme Rules and Guidance, 2021 is as follows:

Guidance Note:

Risk associated with transfers

There are several potentially significant risks to Scheme Members that should be considered when a transfer request is received. Licensees should consider the context of any transfer request and raise any risks relevant to the transfer with the transferors.

Risks which exist globally and within the Bailiwick include, but are not limited to -

- that the transfer may make the transferor liable for an increased level of fees and may result in a lock-in for a period of time during which any subsequent withdrawal or transfer may trigger additional fees, which may or may not have been clearly disclosed;
- that the transfer may have tax implications and may trigger, or increase, the risk of potential enforcement action by the relevant tax authority, all of which may not have been clearly disclosed;
- any plan, by the transferor, to liberate pensions assets may be illegal, or may trigger or increase, the risk of potential enforcement action by the relevant tax authority against the transferor;
- that the pension plan provider receiving the transferred pension assets may not be suitable;
- that the proposed pension plan may not be suitable for the transferor's circumstances or risk appetite;
- that the proposed underlying investments to be held within the proposed pension plan may not be suitable;
- the jurisdiction to which the proposed transfer is to be made may not have comparable regulatory or legal pension or investment protections or might otherwise be unsuitable;
- unscrupulous advisors or introducers may persuade Scheme Members to invest their encashed scheme savings into inappropriate investment schemes for the benefit of their own personal remuneration.

In dealing with a transfer request licensees should consider conducting due diligence on the receiving scheme and connected provider. Where they suspect that the receiving scheme or provider may be involved in a scam, licensees should carefully consider whether the transfer should proceed.