

# INSISTENT CLIENT REGULATIONS, REQUIREMENTS & PROCEDURES

## Are you an Insistent Client?

If you take financial advice and your financial adviser advises you not to invest in a particular product, or advises you not to transfer your final salary pension scheme to a SIPP or personal pension, or advises you not to take any other course of action, and you want to ignore the advice and still proceed with the transaction you are deemed as an insistent investor.

## Exercising your freedom of choice and the limitations imposed on you by the regulators

We believe that you should have the freedom of choice and be allowed to exercise your personal responsibility however the potential liability of conducting a transaction for an insistent client means that many IFA firms will not help insistent investors and they will dismiss requests to help. The FOS are particularly unhelpful because they have suggested that they might hold the IFA liable unless the investor could prove that they had the knowledge of an experienced and qualified financial adviser which would eliminate virtually everyone. With such ambiguity the Professional Indemnity insurers can also be unhelpful and could refuse to allow advisers to conduct such business.

## Foretelling the future

When providing financial advice, we have to get out our crystal ball and foretell the future. In our financial plans we assume that all clients will live to be 100 and if they live to receive a letter from the King our advice may be sound. However, what if they die within the next year or so and we had advised them to not transfer their million-pound final salary scheme to a personal pension. With no spouse the fund will most likely die with them (even the spouse will normally only receive 50% of its value) and their adult children or nominated charity may not receive a penny.

We have come across many clients where their anticipated longevity for one reason or another is potentially short – they have decided that they want to enjoy their pension funds while they are still fit and able and they want to leave any funds left over to a chosen beneficiary. In cases like this it seems perfectly reasonable that clients can exercise their own choice and get access to their pension funds. Therefore, to be limited by the suitability report which says that ‘if you live to be 100 you will be better off if you do not transfer your final salary scheme’ seems to be grossly unfair and unreasonable.

## Our right to refuse to transact

While there are some cases where a client may have sound reasons to transact there are many where it is not. **It is up to the client to provide sufficient evidence and to prove to us that they understand what they are doing and that they have good reasons for doing so.** If we are not convinced and we believe that a client’s request is unreasonable, too risky, or that there is no real need to facilitate the transaction we reserve the right to refuse to transact.

## Suitability of Proposed Transaction

Transactions fall into three categories:

1. They are suitable and we have made a recommendation for you to proceed
2. They are unsuitable and we recommend that you do not proceed.
3. In some cases, the evidence suggests that proceeding is borderline and in this case the action taken depends on the client’s preferences and is decided in discussion with the client

In all cases the client must clearly understand the advantages and disadvantages and clearly state why they want to transact or why they do not.

## FCA Guidance

Following FCA guidance, stringent processes are in place to compliantly transact insistent client transactions.

Where the client’s request is deemed by us to be logical and reasonable, albeit not what we might recommend, the three stage Insistent Client process below will be followed.

NB: The FCA have stated that firms should record all insistent client business, as well as rejected insistent client business.

...continued over 

**Interface** 

# INSISTENT CLIENT REGULATIONS, REQUIREMENTS & PROCEDURES

## Stage 1:

The full normal advice process is adopted – Fact find, assessing ATR, research etc, and issuing a suitability letter based on our recommendation.

## Stage 2:

Client rejects our advice and wishes to proceed on an alternative course. We will obtain clarification in writing from the client detailing the following: - (if via telephone or a video call, a full transcript noting the client's specific request may suffice)

1. Reason for rejecting advice
2. Confirmation of why the client wishes to proceed with the course of action
3. Awareness of risks associated with this course of action which may include:
  - a) Penalties on encashment / transfer / switch
  - b) Reduction of future benefits
  - c) Loss of existing / future benefits (death benefits, guarantees, bonuses etc)
  - d) Depletion of retirement funds / income
  - e) Lack of financial protection
  - f) Liquidity risks

An adviser will then contact the client to discuss and record the implications of taking this action. To allow the client time to re-consider, a final letter (Stage 3) will be sent after at least 5 working days have elapsed.

## Stage 3:

A final letter to the client clarifying that we are acting on the client's insistence and confirming the product, provider and fund choices or the drawdown of funds if in a pension scheme. This will include the risks associated with the instruction. If it relates to the drawdown of a pension fund, it may make specific reference to:

1. Taxation
2. Sustainability of income
3. Impact on state benefits (welfare & social care support)
4. State Benefit means testing – deprivation of capital

The following disclaimer will be added to highlight the potential loss of regulatory protection;

**"For the reasons we have outlined previously we do not recommend that you make the transaction that you are currently making, and due to the associated risks, we believe it is not likely to be in your best interests.**

**"However, if having fully considered all the issues involved, you still feel that you wish to proceed, we can only act on the matter by treating you as an 'insistent client'.**

**"This means that we will proceed with your explicit instructions and no liability will attach to either myself or our IFA firm in respect of this transaction.**

**"You have chosen not to accept my original recommendation and you should be aware that by proceeding on your specific instructions you may not benefit from the protection of the Financial Conduct Authority on assessing suitability, or from the Financial Ombudsman Service.**

**"If this is your intention, please sign and return the enclosed copy of this letter as your acceptance and understanding of its contents".**

...continued over ↘

**Interface** 

# INSISTENT CLIENT REGULATIONS, REQUIREMENTS & PROCEDURES

## A Selection of Reference Sources

- [FCA Pension reforms and insistent clients](#)
- [Acting against advice: how to deal with insistent clients](#)
- [ALIFA Insistent Client Process](#)
- [Are You an Insistent Client?](#)
- [Practical ways to help insistent clients](#)
- [Alan Hughes: Why firms do not need to turn away insistent clients](#)
- [Neil Liversidge: Caveat emptor and insistent clients](#)
- [One in three advisers carry out insistent client transfers](#)
- [SIPPs and the insistent client - is there an easy solution for IFAs?](#)
- [FOS principal reveals keys to defending complaints](#)
- [FCA: Make separate suitability reports for insistent clients](#)
- [FCA: It is up to industry to tackle insistent clients issue](#)
- [Half of DB transfers 'red-flagged'](#)
- [FOS: 'The rules are clear on suitability and insistent clients'](#)
- [DB transfers down 28%, FCA data shows](#)
- [DB Transfer - Important question to ask your IFA](#)
- [Insistent Client Pension Transfers](#)