

Combatting pension scams: Restricting members' right to transfer

Regulations will require immediate trustee action -
and ongoing, proactive intervention.



Introduction

In an attempt to reduce the number of people falling victim to fraudulent activity, the Government is implementing new regulations which will limit occupational and personal pension scheme members' statutory right to transfer their savings where a scam is suspected.

The Department for Work and Pensions (DWP) consulted on a draft of the 'Conditions for Transfer' regulations earlier this year – and published its response on 8 November 2021 – with the new regime coming into effect just a few weeks later on 30 November for transfer requests received from that date onwards.

Trustees will need to take certain immediate actions – in particular to ensure their scheme administrators have updated processes for dealing with pension transfers to reflect the new rules, and that appropriate checks are carried out on receiving schemes.

At a glance

- From 30 November, trustees can stop transfers if they suspect a scam.
- Responsibility will fall on trustees to ensure certain conditions are met before making transfers.
- Where the transfer is to a pension arrangement listed in the regulations (see **First condition**) below, it may proceed with minimal intervention.
- Otherwise, before a transfer can proceed, trustees must check there are no '**red flags**', and members must use the MoneyHelper advice service where there are '**amber flags**' (the **Second condition**).
- **Red flags** include that the individual was pressured to transfer or offered an incentive, or where the individual does not respond to a reasonable request for evidence or information.
- **Amber flags** include where high or unclear fees are charged by the receiving scheme, or where the receiving scheme includes high-risk or complex investments.
- Members lose their statutory right to transfer if neither the **First condition** or **Second condition** are met.



Some future transfer requests will require proactive decision-making on the part of trustees on a case-by-case basis. A robust process will have to be established to allow scheme administrators to proceed with other transfers without having to directly approach the trustees each time.

Transfer conditions

If, after collating appropriate information, the Trustees are satisfied 'beyond reasonable doubt' that the receiving scheme is one of the following types, then the **First condition** is met and the transfer may go ahead. The onus will be on the trustees to verify the transfer destination, rather than on requiring the member to provide proof beyond identifying the receiving scheme:

- a public service pension scheme;
- an authorised Master Trust scheme (on TPR's list); or
- an authorised collective money purchase scheme (list to be published)



The DWP had originally suggested including in this list personal pension schemes with certain authorised insurance companies. However, this was dropped in the final version of the regulations.

In all other transfer cases, pension scheme trustees will have to ensure that the somewhat more complex **Second condition** is met. This requires that:

- there are no **red flags** present (see opposite);
- where the transfer is to an occupational scheme, evidence of an employment link has been provided;
- where the transfer is to a Qualifying Recognised Overseas Pension Scheme (QROPS), evidence of residency has been provided¹; and
- where there are any **amber flags** present (see opposite), the member is directed to obtain guidance from MoneyHelper - part of the Money and Pensions Service (MaPS). The member must use MaPS even if they have appointed their own financial adviser.

Once evidence has been provided that MaPS guidance was received, the transfer may proceed. To help with this, the DWP has said MaPS will provide a 'unique identifier' to each member accessing MoneyHelper.

¹ Some transfers to a specific type of QROPS that is also an occupational pension scheme may only require evidence of an employment link instead of a residency link.

Red flags

- The member fails to provide a 'substantive response' to a request for evidence or information.
- The member fails to demonstrate MaPS / MoneyHelper guidance has been received (when required in presence of an amber flag).
- A regulated activity (such as provision of financial advice, or investment advice) has taken place without the necessary regulatory permissions from the FCA.
- The transfer request was made after unsolicited contact with the member, directly marketing the transfer.
- The member was offered an incentive to transfer (with certain exceptions).
- The member was pressured to transfer, or considers that they felt pressured.

Amber flags

- Incomplete evidence or information is provided by the member.
- The evidence provided is questionable or is provided by a third party (rather than the member).
- The member cannot demonstrate an employment link (occupational scheme).
- The member cannot demonstrate a residency link (overseas scheme).
- The receiving scheme's charges are high or unclear.
- The receiving scheme's investment structure is "unclear, complex or unorthodox". In particular where high risk or unregulated investments are involved.
- Overseas investments are used in the receiving scheme.
- There has been a sharp unusual rise in the volume of transfer requests involving the same receiving scheme or adviser.

TPR guidance

The Pensions Regulator (TPR) has published new guidance for trustees, pension managers and administrators on [dealing with transfer requests](#). Included in the guidance is a helpful decision-making flowchart (see below) outlining the key stages of the flag-checking process.

For each of the red and amber flags, TPR gives examples of the steps that the trustees (or their appointed administrators) can take in order to check whether the transfer ought to proceed. TPR also provides practical and pragmatic interpretations of the legislation which may help trustees to reach decisions where it may otherwise be unclear whether a flag is present. Nevertheless, legal advice may still be needed on occasion.

TPR notes that ultimately, however, a trustee decision to refuse a transfer should be based on the balance of probabilities – and that in many cases spending time and resources to obtain conclusive proof that a red flag is present may not be necessary.

⋮ In order to protect themselves, it will nonetheless be advisable for trustees to keep comprehensive records of the investigations carried out and their decision-making process. The regulator also suggests maintaining a regularly-reviewed 'clean list' of low-risk personal pension schemes in order to make some transfer applications smoother.

Source: The Pensions Regulator

Actions for trustees

As well as reading TPR's guidance, trustees should engage with their scheme administrators and advisers as a matter of urgency to understand:

- what changes are required to their member transfer process;
- whether member communications should be updated;
- how the trustees intend to request further information from members;
- who, how and when judgement calls about stopping transfers will be made; and
- whether a separate policy is required for processing non-statutory transfers.

In due course, trustees should also:

- review scheme booklets, websites, newsletters to ensure wording around members' statutory right to transfer is appropriate;
- consider actively communicating changes to members (or a subset of the membership, for example non-pensioners); and
- consider additional support for vulnerable members or members with special needs.





Please contact your Barnett Waddingham consultant if you would like to discuss the changes that will be required to transfer processes.

Alternatively, get in touch via the following:

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