

news

More convictions for trust busting

Further convictions at Oxford Crown Court this month highlight the huge sums being lost in trust busting scams. In this case a 20% commission was deducted from transfers resulting in a loss to the Inland Revenue of over £1m. Last year Opra fined two trustees of a scheme where a total sum of £1.8m was deducted from at least 94 transfers. Here we suggest some practical steps to assist trustees when making transfers.

The Scam

Bogus employment contracts

Instant cash

Pensions liberation or trust busting scams work by:

- members transferring their pension scheme benefits to a bogus scheme with no genuine employer or business;
- members sometimes being asked to sign sham contracts of employment; and
- payment of a 20 – 40% commission in exchange for instant cash (sometimes the members lose the whole lot).

Trustees' Legal Duties

Pensions Act 1995

Inland Revenue

Trustees of a transferring scheme are obliged to:

- provide members with a statement of their cash equivalent transfer value within 3 months of a request;
- make the transfer payment itself within 6 months of the issue of the cash equivalent statement;
- ensure that the "receiving scheme" has tax approval.

But how far should trustees go to check that the receiving scheme is a genuine one?

Inland Revenue Update 132

Changes to "payee" with effect from 17 May 2002

Update 132 was issued on 17 May 2002 and, with immediate effect:

- prohibited any pension transfers being made through an independent broker (regardless of the type of scheme);
- required that cheques should either be made payable to the receiving scheme itself or, if appropriate, to the relevant life office.

Transferring trustees should now be provided with authorisation from the receiving scheme which will allow them to check the scheme's approval directly with the Inland Revenue.

Opra's powers

Pensions Act

Quinquennial review
December 2002

The onus is on the "whistle-blowers" to report their suspicions to Opra which can:

- intervene and appoint a trustee to the receiving scheme from its own panel under Section 7 of the Pensions Act;
- obtain a search warrant in order to obtain evidence to assist in their investigation.

In practice, Opra has been slow to use these powers and, to some extent, the damage has already been done. The Government's review of Opra has recommended a new proactive regulator to focus on these high risk areas rather than (as currently) at the micro level.

Guidance for Trustees

Some practical steps

Whilst trustees cannot provide their members with guaranteed protection against such fraudsters, the measures outlined below should go a long way to help prevent the kind of transfers that have been the subject of Opra's investigations.

- Check that the receiving scheme is approved by the Inland Revenue.
- Check that the sponsoring company is registered at Companies House. The website address is www.companieshouse.co.uk.
- Request a copy of the former member's contract of employment with the new employer and, say, their two most recent payslips.

If still in doubt, refuse to pay the transfer and tell the receiving scheme or member to write to Opra if they are not happy about the refusal.