Pension scams - empowering trustees and protecting members consultation

Alert | 17 May 2021

Introduction

On 14 May 2021, the DWP published a consultation on draft regulations ("the Draft Regulations") which will require the trustees and managers of occupational and personal pension schemes to ensure that at least one of four new conditions is met before they can act on a pension transfer request from a scheme member.

Key points

- With the aim of better protecting scheme members from scams, the Draft Regulations will introduce new conditions restricting the statutory right to transfer.
- Trustees / scheme managers will also be given the power to request information from the member in relation to the transfer to help them identify whether the member is at risk of a scam.

Background

The first consultation on addressing the threat of pension scams was carried out in December 2016. In its August 2017 response (see our Alert), the Government proposed:

- a ban on cold calling in relation to pensions, to help stop fraudsters contacting individuals
- making it harder for fraudsters to open pension schemes
- limiting the statutory right to transfer to certain personal and occupational pension schemes.

The first two proposals were actioned in January 2019.

Following further engagement with the industry, and with authorised master trusts up and running (a key piece of the Government's jigsaw for limiting transfers), the necessary primary legislation for introducing the new transfer conditions was included in the Pension Schemes Act 2021 (see our Alert).

Proposals

The current legislation gives trustees little scope to refuse to transfer a member's benefits, even if the receiving scheme displays characteristics of a scam. Four new conditions being introduced under the Draft Regulations are set out below. Where a proposed transfer does not meet at least one condition, the statutory right to transfer falls away.

- **First condition – low risk schemes**. Trustees / managers will be required to confirm the proposed transfer is to a receiving scheme perceived as presenting a low risk (a "low risk scheme"). This type of scheme will include a public service pension scheme, an authorised master trust, an authorised collective money purchase scheme and a personal pension scheme operated by an FCA-authorised firm (which is either an insurer authorised by the PRA, or within the same corporate group as such an insurer). If this first condition is met, the transfer will proceed without further checks or requirements.

- **Second condition – employment link**. If the proposed transfer is not to a low risk scheme, the member will need to provide evidence of an employment link between themselves and the occupational pension scheme to which they wish to transfer. The Draft Regulations prescribe the evidence to be used to demonstrate an employment link. For example, a letter from the member's employer confirming that they employ the member, the date from which they have done so and that it is a sponsoring employer of the receiving scheme.

- **Third condition** – **QROPS**. Where the member wishes to transfer to a QROPS and cannot demonstrate an employment link, they must demonstrate at least six months residency in the same financial jurisdiction as the QROPS. While this will be addressed in guidance, the DWP would expect evidence of a residency to include documents such as a visa or citizenship card, or other formal proof of address.

  Alternatively, instead of satisfying conditions two or three, the member can provide evidence of a transfer to the same receiving scheme in the last 12 months. Where satisfactory evidence is provided, the transfer proceeds.

- **Fourth condition – Signs of a scam**. Where none of the first three conditions have been met, trustees / managers will need to assess whether any red or amber flags are present (see below). If not, the transfer can proceed. The trustees / managers will have the power to request information to assess the circumstances of the transfer.

Red flags

Trustees / managers have a reasonable belief that:

- financial advice has been provided by firms or individuals without the appropriate regulatory permissions, or such firms or individuals have been involved in recommending that the member make the transfer

- the member has received unsolicited contact from a party previously unknown to them, whether in person, by telephone, text, letter or email, or via social media

- the member was offered incentives to transfer, including free pension reviews, early access to some or all of their pension savings before normal pension age, a savings advance or cashback from their pension savings

- the member was pressured to complete the transfer quickly, within a short or time limited period.

A member's refusal to provide the trustees / managers with information in relation to the transfer also constitutes a red flag. A red flag prevents a transfer.

Amber flags

- There are high risk or unregulated investments included in the receiving scheme
- The fees being charged by the receiving scheme are unclear or high
- The proposed investment structures are complicated or unorthodox
- The receiving scheme includes overseas investments or any of the advisers are based overseas
- There has been a high volume of transfers to a single receiving scheme or involving a single adviser or firm.

An amber flag means the transfer may only proceed when the member provides evidence of either:

- having taken scams guidance from MaPs, or
- having made a transfer to the same receiving scheme in the last 12 months, and having received scams guidance from MaPs during that period. (Where the guidance is taken, MaPs will provide the member with a unique identifier to demonstrate this.)

There will be no exceptions to the scams guidance requirement. As it is specifically targeted to the risk of scams, it must be taken even where the member has been required to take regulated financial advice in relation to the transfer.

Due diligence

Intending to ensure that due diligence on transfer requests remains proportionate the DWP, in conjunction with partners, has developed a set of standard questions for trustees and managers to use. These questions are set out in Annex 3 of the consultation. The DWP is working with regulators and industry to determine how best to publish this information to support trustees and managers.

Next steps

The consultation closes on 10 June 2021, with the regulations set to come into force in autumn 2021.

Accompanying guidance for occupational and personal pension schemes will be published by TPR and the FCA respectively.

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com