

Combating pension scams – new conditions on transfers

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Introduction

On 8 November 2021, [regulations](#) designed to protect savers against pension scams were laid before Parliament, alongside new TPR [guidance](#) to help guide trustees, pension managers and administrators through the new requirements. Several changes have been made to the regulations since the initial [consultation](#), including simplifying the conditions and reducing them from four to two.

Key points

- With the aim of making it “as hard as possible for criminals to carry out their malevolent intentions”, the regulations will introduce new conditions restricting the statutory right to transfer for both occupational and personal pension schemes.
- Under the new measures, transfers to certain types of scheme can go ahead with minimal extra due diligence. This includes transfers to a public service pension scheme and to an authorised master trust.
- For other transfers, trustees and managers will need to decide whether certain “red flags” or “amber flags” are present.
- TPR has published [guidance](#) to help trustees and managers understand their new powers to halt suspicious transfers. This contains a [transfer process decision tree](#).
- The regulations come into force on 30 November 2021 and will apply to transfers initiated on or after that date. The Government has committed to reviewing the regulations within 18 months “to ensure they remain effective in targeting the evolving methods used by scammers”.

Background

A number of measures already exist to help protect pension scheme members from the threat of scams. These include:

- a ban on cold calling in relation to pensions, to help stop fraudsters contacting individuals, and
- HMRC requirements making it harder for fraudsters to open pension schemes.

Limiting the statutory right to transfer has been on the Government's radar for some time now, as the current legislation gives trustees little scope to refuse to transfer a member's benefits even where the receiving scheme displays characteristics of a scam. With authorised master trusts now up and running (viewed as a key piece of the jigsaw), [PSA21](#) laid the groundwork for the new conditions.

The new conditions

In future, one of two conditions will need to be met before a statutory transfer can proceed.

First Condition

To meet this condition, the trustees or managers of the transferring scheme must be satisfied, "beyond reasonable doubt", that the receiving scheme is a public service pension scheme, an authorised master trust, or an authorised CDC scheme.

The draft regulations also included personal pension schemes operated by FCA registered and PRA authorised insurers within this so-called "low risk" scheme category. However, the reference to such schemes has been dropped following consultation feedback that this could cause commercial harm to schemes falling outside of this narrow category, such as SIPPs.

The evidence or information trustees and managers can require from a member in these circumstances is limited to the details necessary to enable them to identify the correct receiving scheme. In fact, the [consultation response](#) goes as far as to say that they are "forbidden from making further requests", so once the receiving scheme is identified "such transfers should be processed without delay".

Second Condition

Where the First Condition is not met, the Second Condition will apply to all other transfers, involving an assessment by the trustees or managers as to whether certain flags are present as part of the transfer.

As red flags indicate a heightened risk of a scam, the statutory right to a transfer will fall away when the trustees determine that one is present. Amber flags may be an indicator of a potential scam, triggering the requirement for the member to take scam specific guidance from MaPs, and to provide evidence of having done so (see below). Supporting evidence and information will also need to be provided by the member in respect of certain transfers. Some of the flags are broadly drafted, requiring trustees to exercise judgement.

Where the trustees or managers of the transferring scheme decide that neither of the conditions is satisfied, but either they realise a mistake has been made or further evidence or information is provided by the member, they may revisit their decision.

The red and amber flags

Red flags

Example red flags, which are largely unchanged from the draft regulations, include:

- financial advice being provided by firms or individuals without the appropriate regulatory permissions
- the member's request to transfer being made further to unsolicited contact for the purpose of direct marketing
- an incentive being offered to transfer, including free pension reviews, access to some or all of their

pension savings before NMPA, a savings advance or cashback from their pension savings

- the member being pressured to make the transfer
- the member failing to provide a substantive response to a request for evidence or information in support of the Second Condition or to provide evidence that he/she has taken scams guidance from MaPs where required to do so.

Amber flags

As with the red flags, these are largely unchanged from the draft regulations and include:

- high risk or unregulated investments included in the receiving scheme
- fees being charged by the receiving scheme are unclear or high
- the receiving scheme investment structure being unclear, complex or unorthodox
- the receiving scheme includes overseas investments, or
- there having been “a sharp or unusual rise” in the volume of requests to make a transfer from the transferring scheme, either to the same receiving scheme or involving the same adviser or firm of advisers (or both).

Supporting evidence or information which is incomplete or does not demonstrate the employment or residency link will also be an amber flag. The trustees or managers deciding that some or all evidence or information may not be genuine, or may not have been provided directly by the member where required, will likewise constitute an amber flag.

The Second Condition – evidence or information

Where the Second Condition applies, the trustees or managers must request evidence or information from the member to help demonstrate:

- the employment link in the case of an occupational receiving scheme, or
- either the employment link or the residency link in the case of an occupational QROPs, or the residency link where it is not.

Trustees can also request such other evidence or information concerning the circumstances relating to the transfer “as they consider relevant” in order to decide if red or amber flags are present.

Employment link

The conditions for establishing the employment link include the member's employer being a sponsoring employer, his/her employment having lasted for a continuous period of at least three months ending with the transfer request being received, an average gross weekly salary at or above the LEL having been paid, as well as member and/or sponsoring employer contributions. The sort of evidence required from members will therefore include payslips and bank statements.

Residency link

For the residency link, the trustees or managers must decide that the member is resident in the country or territory in which the QROPS is established. Both the consultation response and TPR's guidance refer to tax residency here, and “for a continuous period of at least six months” ending on the date the transfer

application is received.

To support this link, the member will need to provide formal residency documentation (including a certified copy where requested) and at least two other items of evidence in writing. Depending on the relevant country, TPR's guidance suggests a number of possibilities, such as utility bills, insurance documents, bank account and credit card statements, and/or registration at the overseas address with a local doctor.

Data protection

As the transfer conditions could result in new types of information being requested from members, as well as data being processed for a new purpose, trustees / managers should discuss the GDPR implications with their legal advisers.

Communicating with members

Unsurprisingly, trustees and managers will need to inform members about the new conditions and keep them apprised of decisions made.

Except where the transfer has already taken place, the trustees or managers must inform the member of the requirement for one of the two conditions to be met within one month of the transfer process being initiated. Where either condition is satisfied, the member must be notified no later than the date on which he/she is sent confirmation that the transfer to the receiving scheme has been made. In contrast, if neither condition is satisfied and the member has therefore lost their right to use their CETV in respect of that request, the timeframe is much shorter, being seven working days from the trustees' or managers' decision.

Next steps

The regulations come into force on 30 November 2021 and will apply to transfers initiated on or after that date. This will coincide with an application for a statement of entitlement in the case of a DB scheme or a request to transfer in any other case.

With a lot of detail to get to grips with, and with timelines for implementing transfers remaining unchanged, trustees and administrators will need to act quickly to review and update their transfer processes and member communications before the new requirements come into force.