

## New statutory transfer regime: a benefit or a burden?

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Pension scams continue to be of significant concern to pension scheme members and trustees alike. For an individual, being tricked out of retirement savings can have a life-changing financial impact. For trustees, transfers are a high risk activity requiring a careful balancing of legal requirements, regulatory expectations, and industry best practice with member experience and expectations. Looking at the issue more broadly, scams damage the integrity of the pensions industry and undermine consumer confidence.

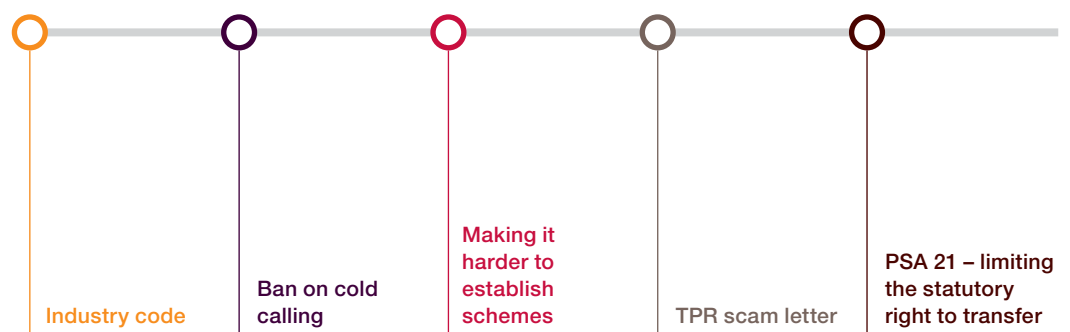
Under the old statutory transfer regime, the threshold for exercising a statutory right to transfer was low. Trustees needed only to confirm that a member was eligible for a statutory transfer, applied within the required timeframe, and the transfer was one which a registered pension scheme could make. Schemes also conducted due diligence to identify whether there were indicators of a pension scam, but the presence of these indicators did not affect the member's statutory right. So, trustees were obliged to give effect to a member's transfer right even where the receiving arrangement appeared to be a potential scam.

The new transfer regime puts due diligence checks on a statutory footing. For the first time, trustees will be able to act on their concerns. This includes the power to decide whether a member's statutory transfer request should proceed, be directed to MoneyHelper for guidance or be refused.

### Every problem has a solution, but is this it?

Last year the Work and Pensions Committee conducted an inquiry into the DC pension freedoms five years on from their introduction. The first stage of that inquiry focused on pension scams and what could be done to prevent them. The Committee acknowledged the raft of measures that have already been implemented to tackle the problem, including: the ban on cold-calling, the introduction of tougher rules to stop scammers opening fraudulent pension schemes and the consolidation of guidance services into the Money and Pensions Service. However, it concluded that there is still work to be done to prevent people losing their hard-earned savings to scams.

#### Background



The new statutory transfer regime is the latest in a long line of measures designed to target pension scams, and it certainly won't be the last. Unfortunately, there is no silver bullet which would eradicate pension scams altogether but this is the latest, and strongest, effort to combat the evolving tactics of scammers.

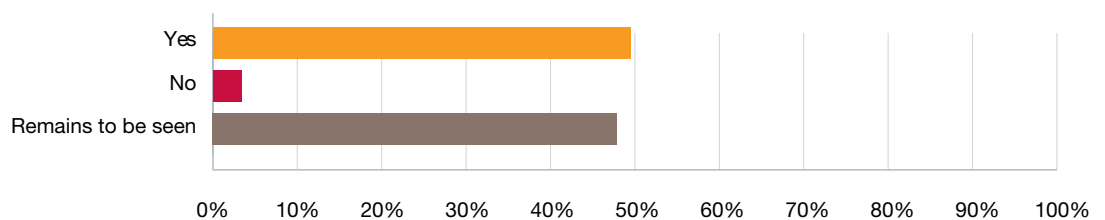
The principle behind the new regime is simple – to better protect scheme members from pension scams and make it as hard as possible for scammers. Like most good ideas, the devil is in the detail. The application of the new regime is not straightforward, and trustees and administrators are working hard to review and update their transfer processes to incorporate the new requirements.

In a recent Sackers webinar survey, respondents were divided as to whether the new regime will prove to be an effective measure against pension scams. This isn't surprising, particularly given the short time frame in which the requirements were finalised and introduced. The proof will be in the pudding.

## Poll

Q1 Do you think the new transfer regime will help to reduce the risk of pension scams?

Answered: 87 Skipped: 1



## Expectations vs reality

The new transfer regulations were rushed into force shortly after they were published, in part to avoid tipping off scammers in advance of the requirements being effective. The Department for Work and Pensions (DWP) stressed that the regulations build on the due diligence checks that schemes were already undertaking, so should not be too onerous to comply with. In reality, we found that trustees and administrators had a lot to do in short order.

The DWP said that 95% of transfer requests will be able to proceed without any additional due diligence checks, and the new regulations will provide an effective tool for addressing the remaining 5% of cases. In our experience this is generally not the case, and schemes are not expecting to waive the majority of transfers through under the first statutory condition (where the receiving scheme is classified as a low risk arrangement under the regulations). This will mean more work for scheme administrators, and ultimately more responsibility and liability for trustees.

Another issue schemes are grappling with is the disparity between the strict letter of the regulations and the risk-based approach outlined in the Pensions Regulator's guidance. For example, in the drafting of the amber flags which are considered to be indicators of a pension scam.

Under the regulations, an amber flag is present if the trustees decide that there are any overseas investments included in the receiving scheme. In contrast, the regulatory guidance provides that trustees should apply the test narrowly to assets or funds where there is a lax or non-existent regulatory environment, or in jurisdictions which allow opaque corporate transactions.

If trustees apply the broader test in the regulations, then most (if not all) receiving schemes would show an amber flag. Following an amber flag, members are required to take guidance from MoneyHelper (and provide evidence to the trustees of having done so) before they are able to transfer.

It is clearly not the case that all schemes which have overseas investments are likely to be pension scams. Applying the regulations in this way may well prove to be administratively unworkable – not least for MoneyHelper.

The DWP have confirmed that this was not their intention, and acknowledge that a distinction will need to be drawn between overseas investments that present scam risk and those that do not. In the meantime, trustees remain concerned that failing to apply the legal test as set out in the regulations runs the risk of future challenge.

## No mountain too high

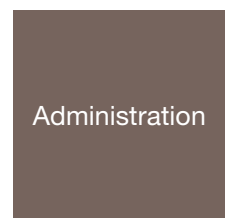
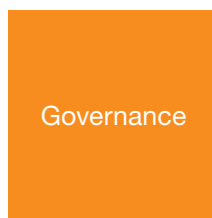
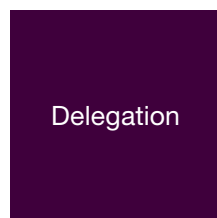
The regulations place the onus firmly on trustees to determine whether either of the new statutory conditions is met. This includes applying a number of subjective tests, for example to determine whether there are any unclear or high fees being charged by the receiving scheme. No guidance has been provided on what constitutes “high fees” in this context, so trustees are left to decide what is appropriate based on their understanding of charges and the information they receive about the receiving scheme.

In practice this means that schemes are taking different approaches, and what might be considered “high” by one scheme may well not be by another. This is unhelpful for members, particularly where they have more than one pension pot and are seeing their transfer requests treated inconsistently.

The Pensions Regulator considers that trustees are well placed to make these sorts of judgement calls to better protect members against pension scams. Some trustees may be confident in doing so, but in our experience most would appreciate further clarification on how to apply the new subjective tests and where to draw the line. We are expecting a new version of the PSIG Code of Conduct on Combatting Pension Scams, which should hopefully provide detailed guidance and sample documents.

## The devil is in the detail

### Think about



Trustees should work closely with the scheme administrator to update their transfer process and agree how and when cases will be escalated to the trustee for a decision. If administrators are able to give a recommendation to trustees based on their due diligence, experience and expertise, this should help trustees to reach a decision as to whether the relevant statutory tests are met.

Scheme administrators are taking different approaches to the new requirements. Trustees should be comfortable that they understand their administrator’s approach and how this fits within the statutory requirements. For example, schemes can adopt a clean list of receiving schemes which they consider to be low risk based on their experience. There are pros and cons to clean lists. On the one hand, having a clean list means that certain transfers are processed without delay and without the need for additional due diligence checks. On the other hand, a clean list is only as good as the information it’s based on.

Trustees will want to have oversight of whether their administrator is able and willing to operate a clean list, how the list is created and monitored and what responsibility the administrator will assume for its list. Whether a clean list is appropriate for the scheme will depend on the circumstances of the scheme, typical transfer activity and the trustees' view of the balance of risk.

Trustees should review the governance around their transfer process and, in particular, their delegated authority for decision-making. This will include: deciding who is best placed to review transfer cases and ensuring that those individuals have the required training to support decision-making. Trustees may also want to receive more detailed reporting from the scheme administrator so that transfer activity can be monitored on an ongoing basis.

Where cases do require additional due diligence checks this is likely to delay the transfer process and may mean that the statutory deadline for paying a transfer is unachievable. When this happens, it's vital that the member is kept in the loop regarding the progress of their transfer request to mitigate the risk of complaints. Trustees should also be clear on the circumstances in which the scheme administrator has authority to request an extension of the statutory payment deadline on their behalf.

As always, the member experience is a key priority for trustees. The transfer process may be the first and only time that a member engages directly with the scheme. Communications should manage members' expectations as to the timeframe for processing their transfer request and the type of information they may be asked to provide. Where transfers are to low risk arrangements, these should be processed without delay.

## It's a marathon, not a sprint

There is a lot in the new regime for trustees and scheme administrators to get to grips with to ensure that the scheme has a compliant process in place. It is important to prioritise actions which are time sensitive such as the disclosure requirements and updating transfer packs.

Trustees should also be prepared to review and revisit their approach to take account of lessons learned and reflect industry best practice as this develops. We expect this to be an iterative process as tricky cases arise and trustees reflect on what works well or not so well. In due course, trustees may choose to extend the scope of delegated decision-making once they have a better feel for how the new requirements apply in practice.

We should also expect further developments to the regime in the not too distant future. The Government has committed to review the regulations within 18 months to ensure that they remain effective, so transfers and the campaign against scams remain on the watch list.

### Watch this space



**The Government has committed to a review of these regulations within 18 months of them coming into force to ensure they remain effective in targetting the evolving methods used by scammers**

**Guy Opperman MP, Minister for Pensions and Financial Inclusion**

