Preventing transfer scams
New measures from 30 November 2021

November 2021

On 8 November the Government finalised its scam prevention regulations which will mean that members of both Defined Benefit (DB) and Defined Contribution (DC) arrangements need to satisfy at least one of two conditions before they have a statutory right to transfer to another pension arrangement.

The new regulations were consulted on over the summer and whilst their final form was only announced on 8 November, they come into force just three weeks later, on 30 November. This means that any DB transfer value quotation and any DC transfer payment request made on or after this date will fall under the new regulations.

KEY FEATURES OF THE NEW REGULATIONS

The regulations are important as they give trustees (and scheme managers) the power to stop a transfer from going ahead where neither of two conditions are met (although it may be possible for them to allow the transfer to proceed on a non-statutory basis, if they feel it appropriate to do so and the scheme rules permit).

The regulations also present some significant new challenges to trustees and their scheme administrators in that some of the decisions needed will require a judgement call to be made, in particular on whether charges in the receiving arrangement are excessively high and/or whether the investment options are unduly high-risk.

In some situations, these judgement calls will need to be made on the "balance of probabilities" and in others on whether "there is reason to believe".

Trustees will need to understand how their administrators will approach making these judgement calls and in which circumstances the position and decision-making will be referred to the trustees. Trustees will also need to consider the process for documenting the delegation of decision-making in these situations to their administrators.

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THE TWO CONDITIONS

The two conditions – to be tested in order – are designed to allow what the Department for Work and Pensions (DWP) views as 'low scams risk' statutory transfers to proceed with little intervention or the need to undertake further checks, leaving the more detailed checks to transfers where there is greater risk that a scam might be involved. The two conditions are:

1

The First Condition

The receiving arrangement is a public sector scheme, an authorised (and listed) master trust or an authorised (and listed) collective money purchase scheme. If the transfer is to one of these arrangements, then once sufficient information has been supplied to confirm the scheme's identity and that it meets one of these criteria, no further checks are required.

2

The Second Condition

For all other transfers - the transfer will normally only be able to go ahead if there are no red flags present that could indicate a potential scam. Where a red flag is present the right to a statutory transfer is lost and the transfer cannot proceed on a statutory basis (although a transfer on a non-statutory basis may be allowed if the trustees wish to do so and the rules of the transferring pension scheme allow this).

As well as red flags, the regulations outline some amber flags which, if present, mean the member will be required to obtain scams-specific guidance from the Money and Pensions Service (MaPS), and provide evidence that they have had this guidance, before the transfer is able to go ahead.

In addition to ensuring that there are no red or amber flags, if the transfer is being made to a UK based occupational pension scheme, the member will be required to demonstrate an 'employment link' in the form of a confirmatory letter from the sponsoring employer meeting certain conditions, and documentation from the member to evidence the payment and receipt of salary. Where the transfer is being made to a Qualifying Recognised Overseas Pension Scheme (QROPS), the member will be required to demonstrate residency in the same country or territory in which the QROPS is established (unless the QROPS is also an occupational pension scheme, in which case the employment link may be evidenced instead).

RED AND AMBER FLAGS

Red flags

There are 6 red flags as follows:

- The member has failed to provide a substantive response to a request for prescribed evidence or information in respect of the Second Condition;
- One or more amber flags have been raised, as a result of which the trustees / providers have required the member to take the MaPS guidance, but the member has not provided the required evidence that this has been done;
- A person without the "appropriate regulatory status" has carried on a "regulated activity" in respect of the transfer – eg a person not authorised by the Financial Conduct Authority has given transfer or investment advice;
- The member's request to make the transfer was made further to "unsolicited contact" for the purpose of "direct marketing" of the transfer;
- The member has been offered an "incentive" to make the transfer – such as a free review to make the transfer (although where an incentive is offered by the trustees or sponsor of the transferring scheme, or someone they have authorised to do so, we believe this is not caught by this definition); or
- The member has been pressured, or considers that they have felt pressured, to make the transfer.

Amber flags

As well as the red flags, there are eight amber flags, which if any are present, require the member to be referred to MaPS for scams-specific guidance:

- The member has provided a substantive but incomplete response to a request for evidence or information;
- Some or all of the evidence provided by the member may not be genuine or may not have been provided by the member themselves;
- All of the evidence required to be provided by the member in relation to the employment link or residency test has been provided, but the evidence does not demonstrate the required links;
- There are high risk or unregulated investments included in the receiving arrangement;
- There are unclear or high fees being charged by the receiving arrangement;
- The structure of investments included in the receiving arrangement is unclear, complex or unorthodox;
- There are overseas investments included in the receiving arrangement; or
- There has been a sharp or unusual rise in the volume of requests to make a transfer from the transferring scheme either to the same receiving arrangement involved in the current request, or involving the same adviser or firm of advisers, or both.

There is also a provision in the regulations which allows trustees to move straight to a decision without requesting evidence (other than that required in connection with the employment and residency links), if they believe that "on the balance of probabilities", there are no red or amber flags present (the 'fast-track' approach).

Trustees should however be mindful that if a decision were fast-tracked and a scam later came to light, this could well reflect badly on the trustees. They should therefore ensure that processes and procedures are clearly documented and that the reasons for moving straight to a decision (including the presence and utilisation of any 'clean' lists of receiving arrangements that are considered to be safe) are appropriately evidenced.

What trustees should do

- ☑ **Prepare updated processes** to comply with the new checks. Give some thought to how and when the information linked to the new conditions will be gathered. Determine how to assess this documentation so that you know what to do at each stage of the process. Set policies for judging red and amber flags, seeking legal advice on these if needed.
- ☑ **Seek legal advice** on what the regulations mean for their scheme and the degree of delegation in decision making they wish to make to their administrators, as well as how this will be documented.
- ☑ **Engage with their administrator** to agree how the new regulations will be implemented, how processes and procedures will be updated, what additional checks will be carried out, as well as how the changes will be communicated to members and what, if any, decision-making authority will be delegated.
- ☑ **Agree with the administrator whether they will operate a 'clean list'** of receiving arrangements, how this will be compiled and monitored, the checks that will be undertaken and the process for and frequency of reviewing.
- ☑ **Ensure any disclosure deadlines will be met** – the regulations have set timescales for certain parts of the process and these will need to be adhered to, together with the wider disclosure requirements for the quotation and payment of transfers.
- ☑ **Confirm the lines of communication with their administrators** for decision making and recording of decisions, together with agreeing the decision-making process between parties.
- ☑ **Be prepared for additional member interaction.** Although the regulations have been designed to protect members, they may lead to more complaints – both from those whose transfers have been blocked, and from those that have gone ahead, only to find themselves unhappy with the outcome (perhaps because of a scam or otherwise).

Want to find out more?

If there is anything further you would like to ask, please feel free to get in touch with your usual client contact or contact Daniel Jacobson, the lead of our Pension Scams Group.

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