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New requirements for statutory transfers

One of the key policy areas in the Pension Schemes Act 2021 is provision to give trustees greater scope to refuse a member's request to transfer when there is concern over the receiving scheme potentially being a scam arrangement In the past, a member's statutory right to transfer their pension savings has often been seen as overriding any scam concerns that might exist about a receiving scheme.

Trustees must ensure that the new requirements are met for all statutory transfers initiated from 30 November 2021.

Following consultation earlier in the year, the DWP has now finalised regulations which seek to restrict a member's statutory right to transfer, unless certain conditions are met.

Background

The changes to the statutory right to transfer have been a long time in the making, having first been consulted on nearly five years ago. It marks the latest government step in fighting pension scams, following the cold-calling ban and the tightening of HMRC requirements to register new pension schemes.

The Pensions Regulator has published guidance on checking, proceeding with and refusing transfer requests from scheme members, in light of the new requirements.

It should be remembered that there is no one step that can successfully combat pension scams, and scammers often now target those members that have crystallised their pension savings, but these latest changes will help those trustees and providers that have felt they had no choice but to pay transfers values, even where they had suspicions about the receiving scheme.

The DWP had previously consulted on plans to require transferring members to meet at least one of four conditions, for a statutory transfer to proceed. These were a transfer:

1. to a low risk receiving scheme, such as a master trust;

2. to an occupational pension scheme, provided there was a clear earnings link;
3. to a qualifying recognised overseas pension scheme (QROPS), where either an earnings or residency link existed; or
4. where no red flags existed (and if any amber flags were present, the member had sought guidance from the Money and Pensions Service (via MoneyHelper)).

The final regulations have sought to simplify the requirements, so that for a statutory transfer to proceed, one of two conditions needs to be met.

The first condition

Transfers to receiving schemes that are deemed to be low-risk can proceed without any further checks beyond a transferring scheme's normal due diligence. This covers transfers to public service pension schemes and authorised master trusts. (When the first collective money purchase schemes are authorised by The Pensions Regulator, they will also fall under this condition.)

A personal pension scheme provided by an FCA-registered insurer will not fall within this first condition.

The second condition

This encapsulates the proposed conditions 2, 3 and 4 (and also now includes transfers to personal pension schemes).

Where the receiving scheme does not fall within the first condition, consideration needs to be given to whether the second condition is met. Further checks may be needed to assess the level of risk to the member. (It could be that previous checks on the receiving scheme mean that the transfer can be deemed as low risk and therefore the second condition is met.)

As originally proposed, for transfers to an occupational pension scheme or a QROPS, evidence will need to be obtained from the member to demonstrate that there is an employment link between the member and the receiving scheme (for a transfer to an occupational pension scheme) or either overseas residency or an employment link, depending on the member's employment status (for a QROPS transfer). The Regulator's guidance sets out examples of the necessary evidence.

Red and amber flags

Where red flags exist under the second condition, then the member can lose their statutory right to transfer. Where amber flags exist, the member needs to prove they have obtained guidance from MoneyHelper before the transfer can proceed.

If red or amber flags exist on a proposed transfer, the member may need to provide further information, which should be reasonable and proportionate to the level of risk that is thought to exist. Any information requested should be solely for helping to decide whether the transfer can proceed.

If additional information is being requested, an explanation of the reasons why it is needed should be included. The Regulator has produced some example questions to ask members which may assist in assessing the presence of flags. It is good practice to call the member, but if these questions are sent to the member to complete, a check needs to be made to ensure it is the member who has answered the questions.

The MoneyHelper guidance

The existence of amber flags does not prevent a transfer from proceeding, but members are required to be firstly referred to the MoneyHelper guidance before the transfer takes place.

The guidance helps to identify common risks involved in transfers, highlights the dangers of pension scams, and allows members to consider whether to proceed with their transfer. It should not be used as a substitute for the transferring scheme's own due diligence about a transfer.

The MoneyHelper website will contain details of the information to be provided to the member so that they can book a guidance session, either online or by telephone. This must be booked and attended by the member and not any person acting on their behalf. The requirement to obtain this guidance applies even if the member has already received regulated financial advice about their transfer. It is good practice to ask the member to confirm once they have booked an appointment so that it can be determined if they will be able to confirm attendance before the statutory deadline for making a transfer.

Once the member has attended their appointment, they will receive correspondence from MoneyHelper with a unique reference number, which must be provided to the transferring scheme before the transfer can proceed. Failure to do this will be a red flag and grounds for stopping the transfer.

If, after receiving the guidance, the member chooses not to proceed with the transfer, consideration should be given about reporting the transfer as a potential scam. Where the member still wishes to proceed with the transfer, this decision should be recorded and the transfer should be paid.

Refusing a transfer

Any decision to refuse a transfer should be based on the balance of probabilities, so the transferring scheme should have a reasonable foundation, on all the evidence and information available, that there is a red flag present. This does not have to be proved conclusively. (Simply believing that a transfer is not in the member's best interest is not a relevant factor to stop the transfer.)

Any refusal to pay a transfer should be clearly communicated to the member where red flags exist and the member is at risk of being scammed. The member should also be informed of the scheme's internal dispute resolution procedure (IDRP) should they wish to appeal the decision.

Records should be retained of the assessment, decision and communications with the member, in order to demonstrate that reasonable action has been taken to warn the member of the risks and the reasons for refusing the transfer. This evidence will be important if a complaint is subsequently made through the IDRP or to The Pensions Ombudsman.

Trustee disclosure of information

The revised statutory right to transfer conditions impose a number of new requirements on members.

On receiving a member's application for a statement of entitlement (for defined benefits) or a request to make a transfer (defined contribution), the member must be informed that the application will be assessed against the two conditions. The member must be notified of this within one month of the application unless the transfer is made within that period.

This an important change from the current requirements, and trustees should ensure their administrators adopt this notification requirement.

Members should also be kept informed of the progress with their transfer throughout the process. Trustees should also consider when and how additional information may need to be requested to assess the presence of red and amber flags, and to notify members of the trustees decision about their application. If a member has failed to provide a substantive response to a request for evidence in relation to a transfer to an occupational pension scheme or a QROPS, a reminder should be sent at least one month after the initial request and a second reminder after a further month. If there is still insufficient evidence this may be treated as a red flag.

Where it is decided the second condition has been met, the member must be notified no later than when confirmation is provided that the transfer has been made. All information that has been requested and received should be recorded, along with the basis on which the decision is made.

Where red flags exist, members should be informed of a decision to refuse a transfer within seven days.

The industry good practice set out in the Pension Scams Industry Group's code of good practice should also be complied with.

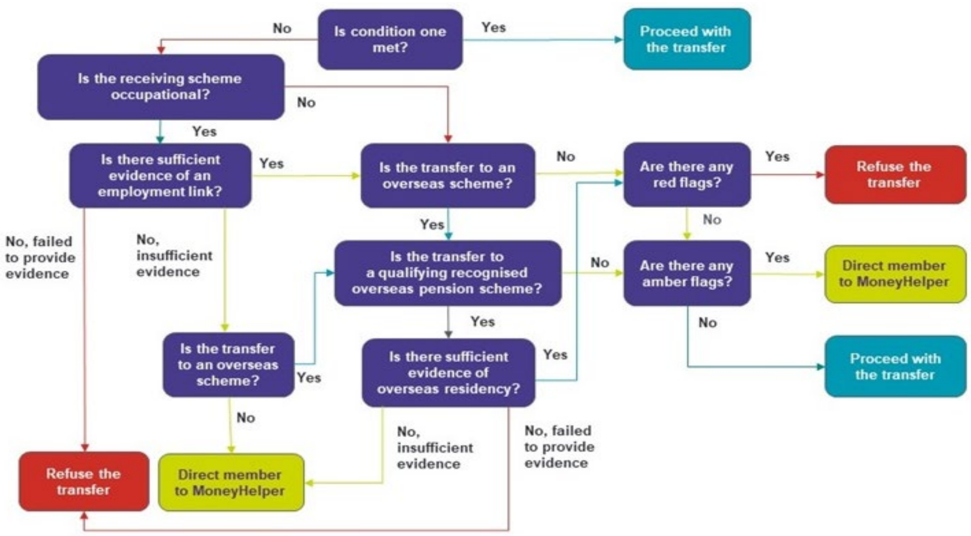
Non-statutory transfers

The power to enable members to make non-statutory transfers is contained in many scheme rules. Although the new regulations only apply to statutory transfers initiated from 30 November 2021, trustees should consider whether to also apply the new requirements to non-statutory transfer requests.

The Regulator's guidance makes it clear that non-statutory transfers should not be used to avoid carrying out due diligence. It expects trustees to carry out enough due diligence on a non-statutory transfer to be confident that they have fulfilled their fiduciary duties to the transferring member.

Trustee process decision tree

The Regulator's guidance sets out the new requirements in a flow chart.



Buck comment

While the proposals contained in the DWP's consultation have largely been taken forward into the final regulations, there are a number of disclosure of information requirements that trustees should ensure their administrators are able to meet. It is regrettable that the regulations have emerged less than one month before the new requirements come into force, and The Pensions Ombudsman is likely to expect near immediate compliance with the new regulations.

These new measures will undoubtedly make it harder for scammers to operate in cases where transfers are targeted, but perhaps in recognition of their ever evolving tactics, the DWP is set to review the new requirements in 18 months' time, to ensure they are still fit for purpose.

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