FYI® Alert
For Your Information®

Volume 2023

Issue 15

28 June 2023

Authors
John Dunkley
Nikki Williams

DWP review into how the statutory transfer regulations are working

In November 2021, the DWP introduced new conditions for transfers to meet as part of its plan to tackle the threat of pension scams.

When the regulations were introduced, the DWP pledged to conduct a review of the regulations within 18 months, to ensure they met the policy intent. The DWP's report on the review has now been published.

While the review does not highlight any major problems with the regulations, the DWP has recognised that certain issues exist and will work with both The Pensions Regulator and the pensions industry to consider changes to the regulations.

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Background

The regulations introduced new conditions for statutory transfers.

The first condition covers transfers to what are seen as low-risk schemes. Transfers to public service pension schemes, master trusts, or collective money purchase schemes, may proceed as soon as the transferring scheme is satisfied the receiving scheme is one of these.

Other statutory transfers fall under the second condition. These are subject to evidence requirements concerning an earnings link with the sponsoring employer of the receiving scheme (for transfers to UK occupational pension schemes) or residency requirements (for transfers overseas). In addition, checks have to be made for the existence of any red or amber flags. Red flags enable a transferring scheme to deny a transfer while amber flags require the member to seek a pension safeguarding appointment from MoneyHelper (i.e. the Money and Pensions Service).

The DWP's review of the regulations was based on three principles that considered:

- the effectiveness of the regulations;
- whether there are any unintended consequences of the legislation; and
- if the red and amber flags are still appropriate.

Transfer data from the review

The DWP launched a data sharing exercise throughout 2022 with pension schemes, administrators, and industry bodies, covering both defined benefit and defined contribution schemes. This found that 94% of transfers were completed under condition 1 or condition 2 with no flags present and only 1% of transfers were completed with a red or amber flag involved.

The most common amber flags were those relating to overseas investments, and high risk/unregulated investments in the receiving scheme. Data from MoneyHelper shows that in the 14 months to February 2023, there were over 12,600 pension safeguarding appointments with transferring members.

The most common red flags related to a member's failure to provide information required by the transferring scheme, including evidence of MoneyHelper guidance.

(It should be noted that the experience of a particular scheme or administrator may not reflect the statistics set out in the review.)

Industry feedback

Pensions industry feedback to the review suggests that the original policy intent of preventing or minimising the risk of someone transferring into a scam pension scheme remains appropriate and, in general, the regulations are the way to deliver that. However, there are some clear areas of concern with the regulations, including:

- The overseas investment amber flag needs to be more clearly defined or removed. As it is structured it can mean that an amber flag needs to be raised, even when schemes have no concerns.
- The incentives flag is incorrectly blocking transfers due to the different interpretation of the flag by some providers.
- Evidence requirements for an employment link can be excessive on transferring members.

Comment

Overall, the regulations have been a help to trustees and providers in the fight against pension scams, as before November 2021 a member's statutory right to transfer often trumped any concerns a transferring scheme might have had about a particular transfer.

The uncertainty over the overseas investments and incentives flags are nothing new. Questions have been raised about these flags, and how they are covered in the regulations, for some time and the DWP must surely have already been aware of these issues well before the review was completed.

The pledge to engage with the industry and The Pensions Regulator is to be welcomed, although it should be noted that no timescale has been given for this as yet.

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