

Protecting Scheme Members from Pension Scams New Conditions for Transfers

Background

In October 2021 Cartwright issued a briefing note regarding a Department of Work and Pensions (DWP) consultation on empowering trustees and further protecting members from pension scams and summarised the proposals in those draft regulations.

Since then, the actual regulations have been published, (The Occupational and Personal Pension Scheme (Conditions for Transfers) Regulations 2021), which came into effect from 30th November 2021.

There are, however, some differences between the draft regulations and those now enacted.

The purpose of this briefing is therefore to summarise the new regulations and advise details of what Cartwright is doing and what adjustments to our processes and procedures are being made.

New regulations

The trustees of occupational pension schemes can now legally prevent statutory transfers from going ahead if there is a risk that a scheme member might be the subject of a scam, and if the transfer does not meet certain conditions.

The regulations now state that there are two conditions that must be met relating to the type of pension scheme to which a member may wish to transfer.

First condition – the receiving scheme is one of the following types of schemes:

- A Public Service Pension Scheme.
- A Master Trust – Authorised by The Pensions Regulator.
- A Collective Money Purchase Pension Scheme (CMPS) – Authorised by The Pensions Regulator.

If the trustees/scheme managers are satisfied **beyond reasonable doubt** that the receiving scheme is one of these types listed above the transfer can proceed without any further additional checks.

Second condition – if the transfer is not to one of the above types of scheme, and it is to one of the following types of schemes, certain conditions must be met:

- A Personal Pension Plan – must be both Financial Conduct Authority registered and a Prudential Regulation Authority regulated insured scheme.
- A Self- Invested Personal Pension or International Self Invested Personal Pension – must be Financial Conduct Authority registered.
- A UK Occupational Pension Scheme – evidence of a member's employment link will be required.
- A Qualifying Recognised Overseas Pension Scheme (QROPS) – evidence of a member's residency status and an employment link will be required.



Determining level of risk of a transfer scam

The regulations also introduce further conditions regarding these types of schemes that must be met before a transfer can go ahead.

Trustees/scheme managers need to assess the risks of a transfer being a scam and must decide on the balance of probabilities as to whether or not it is likely that any risks are present.

The regulations introduce a set of risk warning 'flags', a type of 'traffic light' system indicating the level of risk that applies in relation to transfers.

Red flags - relate mainly to the financial adviser/advice received by the member and can be summarised as follows:

- The member's adviser/the adviser's firm is not fully authorised and regulated.
- The member requested a transfer after unsolicited contact.
- The member has been offered an incentive to make a transfer.
- The member has been pressured to make the transfer.
- The member fails to provide the evidence requested.
- The member, if requested, has not provided evidence of receiving MoneyHelper guidance.

Amber flags – can be summarised as follows:

- The member hasn't shown or can't evidence an employment link or overseas residency as relevant.
- The member's investments in the receiving scheme are high risk or unregulated.
- The member's charges in the receiving scheme are unclear or high.
- The investment structure in the receiving scheme is unclear, complex or unorthodox.
- Overseas investments in the receiving scheme are in assets or funds where there is lax or non-existent regulatory environment, or in jurisdictions that allow opaque corporate structures.
- There is evidence that there is a high volume of transfers to a single scheme or involving a single adviser.

Timings of the application of changes

For Defined Contribution benefits the new regulations apply for any requests to transfer on or after 30 November 2021.

For Defined Benefit transfers in process before 30 November 2021 that is, the member requested a Cash Equivalent Transfer Value (CETV) prior to 30 November 2021, but the member does not make the request to proceed until after 30 November 2021, will not be caught by the new requirements. All requests for a CETV on or after 30 November 2021 will have to comply with the new regulations.

What is Cartwright doing?

Cartwright already had in place a robust system for checking the identity of the member, the registration and validity of financial advisers, the receiving scheme providers and the receiving schemes themselves, and those checks will not change.

However, for transfers to occupational Defined Benefit and Defined Contribution schemes we will be asking, in accordance with the regulations, for evidence of an employment link and will be requesting copies of members payslips and certified copies of member's bank or building society statements or passbooks, Schedules of Contributions/Contribution Schedules and a formal letter



from the Sponsoring Employer, to evidence the members employment and that contributions are being paid in accordance with the scheme rules of the receiving scheme.

Receiving Scheme Investments

The main area of change introduced by the regulations relates to the requirement in respect of schemes which fall under the Second Condition, for trustees/scheme managers to exercise their judgement and knowledge of the current investment market to decide whether the investments in the scheme to which the member wishes to transfer, meet the conditions and on the evidence available and balance of probabilities, no amber flags are present.

This means in order to determine whether the investments are regulated, are not high risk, unclear, complex, unorthodox or speculative and any overseas investments in the members investment portfolio meet regulatory requirements in the overseas jurisdiction to which they relate, and would feature in an investment portfolio for an average member, and that any charges also meet the same criteria.

If the member does not provide the required investment information to enable this assessment, or they do, but any amber flags are present, they will be asked to obtain a guidance session with MoneyHelper and provide evidence and a unique reference number from MoneyHelper confirming that guidance has been obtained before the transfer can proceed.

Communications and transfer process

- We have updated our letters and transfer processes.
- When a member requests a transfer/CETV they will receive an initial letter with the quotation and details of the information regarding their benefits in the scheme, together with the previously issued information and usual scam warnings. Additionally they will now also receive details of the new conditions that must be met.
- They are advised that if they wish to proceed with a transfer that they must let us know of the type of scheme in order that the relevant transfer pack may be sent to them.
- We have produced a new suite of documents for the different types of schemes for completion by the member in which we request the necessary evidence to prove the transfer meets the necessary conditions.
- Training and guidance has been provided to the administrators.
- We will produce a 'whitelist' of schemes that we know are legitimate, regulated schemes, which may aid the day to day transfer process. The list will be regularly reviewed and updated.

Process for the referral of cases to the Trustee/s

If Cartwright have any concerns about the validity of an adviser which may indicate 'red flags' could be present, we will, in accordance with the current process in place, immediately write to the member with these concerns and advise that the transfer cannot go ahead unless the member finds a new registered/regulated adviser.



If Cartwright have any concerns about the members investments, or whether or not the member has adequately demonstrated the employment or residency link where required, which may indicate 'amber flags' are present, Cartwright will write to the member and request further information.

If the member does not provide the required investment information, they will be requested to obtain a guidance session with MoneyHelper and provide evidence and a unique reference number from MoneyHelper confirming that guidance has been obtained, before the transfer can proceed. If the member does not provide the confirmation from MoneyHelper, or the proposed transfer is to an occupational scheme, or to a QROPS, and the required evidence is not received, the member will be advised the transfer will not proceed.

Only if the member then insists that the transfer goes ahead will the case, with all the background information, be referred to the scheme trustees for them to make a final decision.

If you would like to discuss any of these matters further, please get in touch with your usual contact at Cartwright.

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