Transfers: protecting your scheme and its members from pension scams

When members transfer their benefits to another pension scheme this can introduce risks for both the member and trustees. Pension liberation and pension scams have been increasingly big topics for schemes in the past few years, with growing industry and political attention paid to the issue. The Pension Scams Industry Group estimates that *£10 billion has been lost by 40,000 people to pension scams since 2015.*

Changes have been brought in under the Pension Schemes Act 2021 (effective from 30 November 2021) to try to help combat this and trustees and administrators will need to ensure that scheme processes are updated to comply with the new requirements.

This guide explains the risks to trustees and members from transfers, how key risks can be managed and how the law is changing.

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> More flexibility means more potential for the unscrupulous to take advantage and scam savers out of what will very often be their largest financial asset"
>
> *Rt Hon Stephen Timms MP, Chair of the Work and Pensions Committee, Work and Pensions Committee enquiry*

Trustees' obligations and risks – an overview

The factual and legal issues regarding transfers can be complex. However, there are some key obligations and risks trustees should have in mind in relation to pension scam risks.

Due diligence and warnings

- Due diligence must be carried out to establish whether statutory transfer conditions are met and to spot any scam concerns.
- Trustees must provide appropriate warnings:
  - generic warnings (e.g. ScamSmart leaflet).
  - warnings regarding any scam concerns spotted in due diligence.

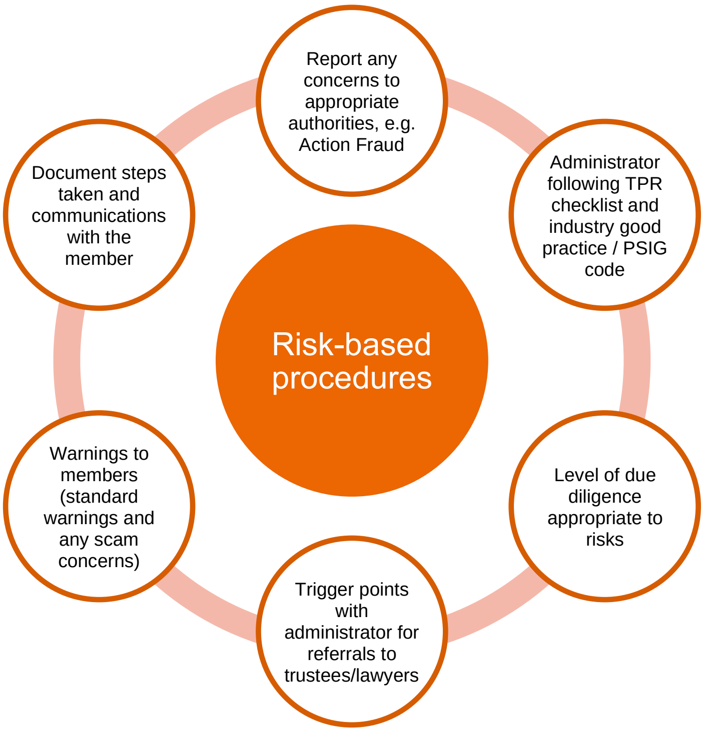
Does the member have a statutory right to transfer? *

- **Yes** - trustees must usually transfer the member. If there are scam concerns, consider taking legal advice and make sure concerns communicated to member so he/she has an opportunity to reconsider.
- **No** - trustees may transfer the member if the scheme rules allow this (unless required under scheme rules). Trustees will not receive a statutory discharge if the transfer is non-statutory – appropriate written discharge should be provided by the member.

Potential liability for trustees

- If member loses money to a scam and can show they would not have transferred if they were told about relevant scam concerns and/or he/she did not have a right to transfer but trustees allowed transfer in spite of scam concerns, trustees may have to reinstate the member into the scheme at the scheme's cost.
- Tax - trustees may suffer tax charges if not a 'recognised transfer' and/or an overseas transfer charge is payable. Proper due diligence may support a defence against charges.

**Members may have a statutory right to transfer their benefits, provided certain conditions are met (such as the provision of paperwork within certain timescales and the recipient scheme being of an allowed type). Administrators should be aware of the relevant requirements to ensure that non-statutory requests are flagged to trustees, although legal advice may be required in more complex cases*



Additional conditions under the Pension Schemes Act 2021:

New regulations have been passed to add conditions around statutory transfers, which came into force on 30 November 2021. In summary, the new conditions are:

Receiving scheme on a prescribed list of low risk schemes (such as an authorised master trust) & trustees received confirmation from scheme that authorised/established in line with relevant requirements?

→ Yes – additional conditions satisfied

↓ No – next step below

Are there red flags or amber flags?

If the receiving scheme is an occupational scheme and/or QROPS, has the member provided the required evidence of employment link if an occupational scheme and/or of a residency link for a QROPS?

→ Red flag exists – transfer cannot proceed

→ No red or amber flags – additional conditions satisfied (*but consider whether more information should be requested*)

↓ Amber flag(s) – next step below

Member has taken MoneyHelper guidance on pension scams and provided evidence of this?

→ Yes – additional conditions satisfied

→ No – transfer cannot proceed

Red flags include where:

- financial advice or recommendation to transfer given to the member without appropriate regulatory permissions
- unsolicited contact with member
- member offered incentives to transfer
- member pressured to complete the transfer
- member has failed or refused to provide information requested by the trustees regarding red or amber flags
- member has not provided any evidence of receiving MoneyHelper guidance when requested to do so

Amber flags include where:

- receiving scheme includes high risk, unregulated or overseas investments
- fees charged by the receiving scheme are unclear or high
- proposed investment structures are unclear, complicated or unorthodox
- trustees are aware of a sharp or unusual rise in transfers to the receiving scheme and/or involving the adviser or firm
- the information provided by the member may not be genuine, is not provided directly by them or is incomplete

Next steps:
The new restrictions came into force on 30 November 2021, applying to applications for statements of entitlement (DB) and transfer requests (DC) made from that date.

Trustees should take advice on these issues and consider the interaction with their scheme-specific transfer out provisions, if relevant. Administrators will also need to be in a position to implement the new requirements when they come into force, as well as related notification requirements to members.

The Pensions Regulator has issued guidance to support trustees with these changes, including a checklist of information trustees should require from members and examples to help assess red and amber flags.

History of transfers and pension scams:

- 1980s: statutory transfer right introduced.
- 2015: “pension freedoms” introduced, leading to a large increase in transfers, with a corresponding increase in pension scams.
- Since 2015: pension scams have increased in sophistication, for example, via complex investment fraud or scammers targeting members of schemes with distressed sponsors (such as British Steel). There has also been an increase in the number of claims management companies seeking redress on behalf of members where they are unhappy with transfers. They often target pension schemes with very wide data requests.
- 2018: Pensions Ombudsman orders reinstatement of member to Northumbria Police Authority scheme after finding that the Authority failed in its due diligence and communications with the member, who transferred into an apparently fraudulent scheme (Mr N, PO-12763).
- 2019: ban on pensions cold-calling introduced. This may have pushed fraudulent activity online and onto social media.
- 30 November 2021: the new regulations under the Pension Schemes Act 2021 will come into force with the aim of curbing transfer fraud.
