

DWP strengthens transfer regulations to help combat pension scams



What you **need to know**

- The Pension Schemes Act 2021 provides for new conditions allowing trustees to stop transfers being processed, restricting statutory transfer rights. This is intended to combat pension scams.
- Earlier this year, the Department for Work and Pensions (DWP) consulted on the detailed regulations to introduce these conditions. The final regulations were published on 8 November 2021 and will be effective from 30 November 2021, so immediate action is needed.
- The final regulations have changed significantly since the draft regulations were consulted upon. They are now based on two conditions that must be tested, reduced from four in the initial draft. The member only retains their statutory right to a transfer if one of the two conditions is satisfied.
- The most substantial change is to the 'First Condition' which identifies assumed safe destination vehicles. Personal pensions through an insurer no longer satisfy that condition. This reduces the proportion of transfers expected to satisfy this condition from 62% to 2%.
- This means that almost all transfers will need to be assessed under the 'Second Condition'. This condition looks for specific warning signs of a pension scam, directing members to government scam guidance in some circumstances.



Actions you should take

- **Check** your administrators will have their processes updated in time to carry out the checks required by the new regulatory conditions.
- **Determine** how you will identify systemic warning flags across transfers.
- **Consider and agree** how you will exercise your trustee judgment in determining whether some of the flags are triggered (e.g. what constitutes a high fee).
- **Review your scam protection procedures** to ensure that they are robust and aim to identify potential scams in all cases, not just those which do not meet the conditions set out in the regulations.
- **Communicate with your members** to ensure they are aware of the additional information that they may need to provide. Transfer packs should be updated and you may wish to issue a one-off communication.

Applying the rules to previous red flag cases

We applied the First Condition to all transfers covered by our **Scam Protection Service** since 1 July 2018. Under the draft regulations, 37% of 'high risk' transfers would have met the First Condition. The table below shows how changes to the First Condition result in almost all 'high risk' cases being subject to further checks.

Scam risk identified by XPS	Number of cases	Proportion that meet the First Condition (i.e. no further checks)	
		Draft regulations	Final regulations
Flagged as a high risk of a scam	462	37%	Under 1%
Flagged as at some risk of a scam	1,143	69%	Under 1%

Source: XPS Scam Protection Service cases from 1 July 2018 to 30 April 2021



The finer detail: The two conditions in the regulations

The final regulations set out two conditions that need to be applied to each transfer. These conditions are applied in order and if both conditions are not met then the statutory right to a transfer is removed and trustees can block the transfer from proceeding.

The two conditions, how they differ to the conditions set out in the draft regulations and the actions that trustees need to take, are set out below.

Satisfied if	Change from the draft regulations	Actions trustees need to take
1 The transfer is to: <ul style="list-style-type: none"> A public sector pension scheme; An authorised Master Trust; and An authorised collective money purchase scheme. 	Personal pensions through an insurer have been removed from the list of schemes.	Trustees to obtain confirmation of type of arrangement the member is transferring to. The trustees cannot require the member to provide this proof.
2 The transfer does not exhibit any red flags as defined in the regulations. A transfer exhibiting an amber flag can only proceed if the individual can demonstrate that they've taken expert scams guidance from the Money and Pensions Service (MaPS).	The requirement to obtain proof of an employment link if a transfer is to an occupational pension scheme, or a residency link if the transfer is to a qualifying registered overseas pension scheme (QROPS) are no longer separate conditions. There are also additional amber flags relating to the evidence provided.	Trustees need to carry out checks to identify the presence of red or amber flags. The member will need to provide the information required for the trustees to assess the presence of any red and amber flags.

What are the red and amber flags?

Red flags	Amber flags
<ul style="list-style-type: none"> Failure or refusal of member to provide requested evidence 	<ul style="list-style-type: none"> Incomplete response to requests for evidence
<ul style="list-style-type: none"> Failure to take specified guidance from MaPS 	<ul style="list-style-type: none"> Evidence does not demonstrate employment or residency link (where applicable)
<ul style="list-style-type: none"> Member has received financial advice from an IFA without the correct regulatory permissions 	<ul style="list-style-type: none"> Evidence does not appear genuine or has been provided by a third party, not the member
<ul style="list-style-type: none"> Member was subject to unsolicited contact regarding their transfer 	<ul style="list-style-type: none"> Investments in the receiving scheme are high risk, unregulated, unclear, complex or unorthodox
<ul style="list-style-type: none"> Member was offered an incentive to transfer (not including transfer incentive exercises) 	<ul style="list-style-type: none"> Unclear or high fees charged by receiving scheme
<ul style="list-style-type: none"> Member was pressured to make a transfer 	<ul style="list-style-type: none"> Overseas investments in the receiving vehicle
	<ul style="list-style-type: none"> Sharp rise in volume of requests from same advisor or to the same receiving vehicle

For further information, please get in touch with **Mark Barlow** or **Helen Cavanagh** or speak to your usual XPS Pensions contact.



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