

## New statutory transfer conditions in force from 30 November

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November 2021

From 30 November trustees must refuse to transfer a member's cash equivalent unless they are satisfied that a relevant Transfer Condition applies. Prior to the coming into force of The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (the Regulations), trustees could not prevent a member from exercising his statutory transfer rights, even in circumstances where a pensions scam was suspected.

### There are two Transfer Conditions:

- The First Condition will apply where the receiving pension scheme is a public service pension scheme, an authorised master trust, or an authorised collective money purchase scheme.
- The Second Condition will apply where the transfer raises no "red flags", or it raises an "amber flag" and the member has taken pension scams guidance from the Money and Pensions Service (MaPS).

Where the trustees decide that a Transfer Condition does not apply, the member loses his statutory right to transfer his cash equivalent (in respect of the transfer under consideration).

Trustees should already be conducting basic due diligence on receiving schemes where they receive transfer requests from members. In many cases, the results of this exercise will be sufficient to establish that the First Condition is met or, on the balance of probabilities, that no red flag or amber flag is present. However, trustees will be required to undertake more detailed investigations for the purposes of deciding whether the Second Condition applies:

- where the transfer is to an occupational pension scheme or a qualifying overseas pension scheme, and/or
- where circumstances giving rise to a red or an amber flag are suspected.

## **Transfers to occupational pension schemes and qualifying overseas pension schemes**

Where the receiving scheme is an occupational pension scheme, trustees must request evidence from the member to demonstrate an “employment link” (broadly, that the receiving scheme is operated by the member’s current employer and certain minimum salary and contribution requirements are met). Where the scheme is a qualifying overseas pension scheme, trustees must request evidence of an employment link or a “residency link”. In summary, a residency link will be established where the member is able to demonstrate that he is resident in the same country as the receiving scheme is established.

The Regulations list in detail the evidence that is required to demonstrate the employment link and the residency link (as applicable). The evidentiary requirements could present a challenge in terms of meeting the six month statutory transfer deadline as relevant information will need to be gathered and considered before trustees can decide whether the Second Condition is met.

### **Red flags**

The Second Condition will not apply where any of the following circumstances are present in respect of the transfer (so-called red flags):

- the member fails to provide evidence to demonstrate an employment or residency link (where applicable)
- the member fails to provide evidence that he has taken pension scams guidance (where one or more amber flags are present)
- an unregulated person has carried out a regulated activity in respect of the transfer
- the transfer request was made following unsolicited contact for the purpose of direct marketing of the transfer
- the member has been offered an incentive to make the transfer
- the member has been pressured to make the transfer

### **Amber flags**

Where the trustees decide that one or more of the following amber flags are present, they must require the member to take pension scams guidance from MaPS and to provide evidence of having taken the guidance.

The circumstances giving rise to amber flags include:

- where the member provides only some evidence (but not all) following a request by the trustees (for example, to demonstrate an employment link or a residency link)
- where the trustees decide that some or all of the evidence provided in response to a request may not be genuine or may not have been provided directly by the member
- where evidence provided by the member does not demonstrate the employment link or the residency link

- the inclusion of high risk or unregulated investments in the receiving scheme
- where the fees being charged by the receiving scheme are unclear or high
- where the structure of investments in the receiving scheme is unclear, complex or unorthodox
- the inclusion of overseas investments in the receiving scheme
- a sharp or unusual rise in the volume of requests to make a transfer either to the same receiving scheme or involving the same adviser.

In many cases a judgment call will be required as to whether or not a particular circumstance exists, particularly those which rely on more subjective criteria. Trustees will want to understand how the flags are interpreted and applied by their administrators and whether this is in line with any emerging industry practice.

### Comment

Although the Regulations require the trustees to decide whether or not a Transfer Condition is satisfied in respect of a transfer, in practice, this decision is likely to be taken by the scheme administrator in the first instance (acting under delegated authority). Trustees should check that their scheme administrators are up to speed with the new requirements and are able to implement them from 30 November, including understanding which transfers attract higher levels of due diligence and the information which needs to be provided to members at different stages of the process.

Going forwards trustees may find they are asked by their administrators to review transfer requests on a more regular basis as the new requirements bed down. The Regulations contain a number of tricky areas so please do get in touch with your usual adviser in the pensions team if you require any advice concerning their application.

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