Pension Scams: where we are and where we might be?

With Action Fraud reporting that £1.8m has been lost this year to pension fraud, the legislators, the regulators and the industry cannot continue to accept the status quo. Thankfully action is being taken against this fraud. This Aries Insight considers upcoming developments, recent guidance on due diligence against scams and the direction of travel for tackling the scams scourge.

Pension Schemes Act 2021

Currently, if a member has a statutory right to a transfer, the transferring scheme is very unlikely to be able to refuse the request, even if the receiving scheme is suspected of scam activity.

The *Pension Schemes Act 2021* (PSA 2021) paves the way to change this position somewhat. Consultation and regulations are required, but the legislation is expected to provide that there would not be a statutory right to transfer if certain scam-related 'red flags' are present.

Evidence of an earnings link to a sponsoring employer of the receiving scheme is also likely to be a requirement.

In addition, it is likely that the member will be required to obtain guidance on the proposed transfer, and provide the trustees of the transferring scheme with evidence of this.

It is currently expected this will be in place by October 2021.

Scams Due Diligence

Since 2015, the Pension Scams Industry Group (PSIG) has maintained a Code of Good Practice for combating pension scams.

Regardless of whether or not a transfer request should or should not be granted, trustees/providers can make sure their due diligence is watertight. This is where the Code comes in.

Version 2.2 represents a significant update, with the Code's 'Practitioner Guide' providing particularly useful action steps for assessing the scams threat.

PSIG suggests that pension scams information should be included prominently on websites and on any customer mobile applications.

Pension scams warning messages and a link to the ScamSmart website should be included within annual benefits statements, pre-retirement letters and transfer packs.

Responses to requests for information or for transfers should reference the Pensions Regulator's (TPR's) latest pension scams awareness material and its scams warning member leaflet.

For all defined benefit (DB) scheme members who request a transfer out quotation, a link should be provided to Financial Conduct Authority (FCA) information on considering a pension transfer from a DB pension. DB members requesting a transfer should be provided with this letter template.

Members seeking a lump sum or income drawdown should be encouraged to contact the Pensions Advisory Service (TPAS) for free and impartial guidance. TPR expects this for every drawdown request.

When a transfer request is received, it should be considered very low risk and can proceed if:

- the transfer is to a recognised 'club' or group recipient;
- the administrator/scheme has been identified as not presenting a risk of scam activity.

To identify the need for further analysis before proceeding with the transfer, PSIG recommends eleven areas to consider:

1. The Adviser

Check the 'Permission' section of the FCA register entry for the advice firm to confirm the adviser has appropriate permissions for the financial advice provided.

For a transfer of safeguarded benefits, if the necessary advice has been given without the appropriate permissions, the transfer should be refused.

If a suitability report has been provided concerning the advice, the transferring scheme is not required to review the quality of the advice. However, it might be prudent to consider whether a template suitability report has been used: typos and obvious errors could indicate a concern.

A high volume of transfer requests from the same adviser/intermediary over a short period of time is likely to be cause for concern.

2. Contract-based Schemes (eg SIPPs)

Check the provider or operator is FCA registered. If not, the transfer must be refused but further analysis should continue, to capture full information.

3. Previous Scam Links

Google searches, internal links and FCA cases may identify links to pension scamming.

4. Third-party Introducer

If an unregulated introducer is involved in the transfer request, the member should be asked further questions.

5. Planned Investments

If any investments in the new scheme are high risk or unregulated, or the member is unable to say, that is a concern. This is also the case if the transfer is to an overseas scheme/investment and the member is resident in the UK. Check if any of the investments are listed on the FCA's site.

6. The New Scheme

More analysis is justified if the receiving scheme is newly established (such as within the last 12 months).

7. The Employer (transfer to an OPS)

If the employer is not actively trading, the member should be asked further questions.

8. Transfer History

Check whether there has been a high volume of transfers to or from a single scheme over a short period of time.

9. Scheme Hopping

Is the individual transferring out of a defined contribution (DC) scheme soon after transferring in from a DB scheme?

10. Loss of Existing Guarantees

Will any valuable guarantees be lost on transfer?

11. Other

Any other concerns at all should prompt further analysis. PSIG's Resources Pack lists many additional due diligence considerations.

Asking Questions

In addition to obtaining written information, it is recommended to have a phone conversation with the member to ask basic questions about: the reasons for the transfer; how the request came about; and who is providing advice to the member.

PSIG's Resources Pack provides telephone scripts of questions to ask members and example letters.

The Pack also contains example sheets to record decisions: good records and an audit trail should be maintained of the information requested and the decisions made.

Trustees and administrators can suggest that the member call TPAS to talk through the proposed transfer and the warning signs.

Extensions

For transfer requests from an occupational pension scheme, if more time is needed, an extension to the usual six-month window to process transfers should be considered and sought from TPR.

However, pensions scam concerns are not listed in the criteria for such an extension. The justification could be that the member has not taken provided such information, or taken such steps, that trustees can reasonably expect.

How to Proceed?

Following due diligence - if the member has not withdrawn the request - trustees/providers will need appropriate procedures and governance to determine the pension scam risk.

If there is a material pension scam risk, it should be considered whether the member actually has a right to transfer.

If the member has a statutory right to a transfer, then ultimately it may have to be paid - subject to the necessary conditions being met for trustees or managers to obtain a statutory discharge of their obligation to provide the benefits represented by the cash equivalent transfer value.

If the transfer is made despite pension scam concerns, the member should be asked to sign a suitably robust discharge form before making the transfer. This form should clearly articulate the concerns identified.

Whether refused, transferred under discharge, or cancelled, all transfers of concern should be reported to Action Fraud (or for Scottish pension scheme members, Police Scotland). The FCA, TPR, National Crime Agency and the National Economic Crime Centre should also be informed.

Refusing a Transfer

The news should be broken over the telephone whenever possible and confirmed in writing. Where appropriate, the administrator/adviser should be informed.

The member may challenge the decision and may offer sufficient additional information to require the decision to be reconsidered.

The Future?

In addition to upcoming PSA 2021 changes to the statutory right to transfer, the Government has also set out its intent to require trustees of occupational schemes "*to nudge members to appropriate guidance when they want to access their pension through the pension freedoms*". This too might serve to reduce the number of inappropriate transfers.

The Work and Pensions Committee (WPC) has become increasingly influential in recent times and has made pension scams a particular focus. It has made some bold recommendations for quick and decisive action, notably:

- The DWP should publish details of its plans to co-ordinate work with the HM Treasury to combat pension scams as a matter of urgency.

- The role of the Project Bloom taskforce should be given a statutory remit, an appropriate name ("the Pension Scams Centre" is suggested) and dedicated funding. Alongside law enforcement, staff would manage a pension scams intelligence database facilitating intelligence-sharing within the pensions industry and between regulatory bodies.

- Project Bloom should actively encourage the pensions industry to sign up to the Pension Regulator's (TPR's) scams pledge.

- HMRC should re-join Project Bloom.

- Action Fraud should make it clear that the industry must make reports of scam activity, to Action Fraud, and should provide clear guidance and an effective tool for the industry to do so.

- The Money and Pensions Service (MaPS) should run a programme to encourage eligible expatriates to access the free guidance it offers through its new consumer facing brand MoneyHelper, when it launches in June 2021.

- The DWP should set out a plan for how a Pension Wise appointment should be the norm and a timetable for getting there.

- The pension advice allowance overall cap of £1,500 should be reviewed and the annual cap of £500 (on the amount which can be withdrawn in any one year under the pensions advice allowance) should be removed.

- The FCA should publish a costed plan to "*raise its game*" to tackle scams. It should also proactively publish data about its enforcement action, rather than waiting for Freedom of Information requests.

- The Government should review the recourse available to pension scam victims when the actions of a regulator have been beneficial to the scammer.

- HMRC should make greater use of its current discretion to support pension scam victims left owing large tax bills. It should do its upmost to provide them certainty where possible. If this is not possible, the Government should consider whether legislation is required to give HMRC the option not to pursue tax penalties against pension scam victims.

- HM Treasury should recognise that, in some clearly defined circumstances, where the saver has been the victim of a crime and made no financial gain from the early access, it may not be in the public interest to demand payment of tax due.

- Where someone seeks to access their pension before the age of 55 without being eligible for one of the exemptions, pension schemes should be required to withhold the unauthorised payment charge and surcharge and pay this to HMRC. In the event that the charge is not due, the individual could reclaim it from HMRC.

- Where someone is seeking to transfer or access their pension before the age of 55, pension schemes should be required to inform them, in a clear and accessible format, about the unavoidable tax charges they would face if they access their pension early. For people who access their pensions after this requirement has been introduced, it would be reasonable for HMRC to collect the tax due - unless it can be proved that the requirement was not adhered to.

- TPR should review the value for money that scam victims get from independent trustees appointed by TPR to scam schemes.

- TPR should review and make a recommendation to DWP for allowing members to more easily transfer out of a scheme where a professional trustee has been appointed by TPR before all of the assets are recovered, if this would be in the member's interest.

- DWP should lead in the creation of a strategy to ensure that all pension scam victims are offered, and encouraged to take, support for both the financial harm and psychological distress caused by pension scams. Support for financial harms could be delivered through the MaPS's MoneyHelper brand when it launches (June 2021). Support for psychological distress could be delivered jointly with other Government departments to signpost relevant services.

- The regulatory framework for financial promotions should cover paid-for advertising on online platforms. The forthcoming Online Safety Bill should legislate against online investment fraud.

- Voluntary codes of conduct should be developed by search engines and social networks which make it clear that a request from a UK-based regulator is sufficient to remove a scam advertisement.

Whether the WPC recommendations can influence policy is yet to be seen, but they are illustrative of some wider issues emanating from pension scams.

Aries Comment

Pension scams have been the bane of the pensions industry for many years. Whilst it would be naive to assume that the adoption of the PSIG Code of Good Practice, changes to the statutory right to transfer or the extensive recommendations from the WPC will completely solve the problem, any progress on this area must surely be welcome.

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