

# Pension transfers: new requirements in force on 30 November 2021

November 2021

Pension briefing

## HIGHLIGHTS

The DWP has announced this week that major changes to the pension transfer regime will have effect from 30 November 2021, aimed at further strengthening protection for members from transferring their pensions to scam arrangements.

Before transferring a member's benefits to another pension arrangement, trustees will have to carry out various checks to assess the presence of "red" or "amber flags". In some cases, the checks will require asking for considerable amounts of evidence from the member.

A red flag means the transfer must not proceed. With an amber flag, the transfer may proceed only after the member has undertaken a session of scam protection awareness with [MoneyHelper](#).

All UK occupational and personal pension schemes should prepare to start implementing the new regime from 30 November.



## BACKGROUND: THE ISSUE

Scammers trying to get hold of members' money by persuading them to transfer from their occupational or personal pension scheme to the scammer's pension arrangement is, sadly, nothing new. Scammers' techniques and promises have evolved over the years, but some of the common features used to persuade individuals to transfer include:

- Promises of accessing pension money early, before the individual reaches "normal minimum pension age" (usually age 55), often causing significant unauthorised payment tax charges to fall on the member;
- Offering the prospect of (unrealistically) high investment returns in assets such as storage pods, forestry, or overseas hotel complexes;
- For members with defined benefit (DB) rights, playing on fears that the sponsoring employer might become insolvent, leaving the pension scheme in deficit – suggesting that the member's benefits would be "safer" if transferred to the scammer's scheme.

Concern from government, the Pensions Regulator (tPR) and the pensions industry over the years has led to various initiatives aimed at protecting members, including:

- Education and communication campaigns such as tPR's "scorpion" campaign launched in 2013, the ScamSmart campaign run jointly by tPR and the Financial Conduct Authority and, more recently, TV advertising urging "Don't let a scammer enjoy your retirement";
- A ban on unsolicited approaches ("cold calling") in relation to pensions, with effect from January 2019.

Unfortunately, despite the best efforts of these and other campaigns, members continue to be taken in by scammers keen to part them from their hard-earned retirement savings.

## The statutory right to transfer: a mixed blessing?

Until the law changes on 30 November, a member who meets certain criteria has a statutory right to transfer their pension to another scheme – meaning that while trustees can issue warnings (within the extent permitted without straying into giving regulated financial advice), a member who is determined to transfer may insist on doing so and there is nothing the trustees can do to stop this, even where they have sound reasons for believing that the destination scheme is a scam.

## WHAT'S NEW?

From 30 November 2021, trustees may only process a member's statutory transfer request if the trustees have decided that either the **First Condition** or the **Second Condition** is met in relation to the transfer.

If neither the First Condition or the Second Condition is satisfied, the member will lose the right to transfer.

## Which transfers are affected?

The new requirements will apply to individual transfers in reliance on the member's statutory transfer right from an occupational or personal pension scheme to:

- An occupational pension scheme;
- A personal pension scheme;
- Another pension arrangement which meets prescribed requirements.

The requirements also apply in relation to transfers of pension rights following pension sharing on divorce.

The transferring trustees must inform the member of this requirement, within one month of receiving the member's

application for a transfer value (DB rights) or request to transfer (defined contribution (DC) benefits).

### What about transfer requests already in process on 30 November 2021?

The new requirements only have effect where the member applies for their transfer value, or requests a transfer of their DC benefits, on or after 30 November 2021.

Where the member has started the transfer process (by applying for a transfer value or requesting a transfer of DC rights) before 30 November, the trustees should process the transfer under the previous rules.

### WHAT IS THE FIRST CONDITION?

The First Condition is met if the receiving scheme is:

- A public sector pension scheme;
- An authorised master trust scheme; or
- An authorised collective money purchase scheme.

The member must supply details necessary for the transferring scheme trustees to identify the receiving scheme correctly. However, it will then be for the transferring scheme trustees to satisfy themselves “beyond reasonable doubt” whether the First Condition is met.

A proposal in consultation earlier this year that personal pension schemes operated by insurers should also be “First Condition” schemes has been dropped, following concerns that this would create an unlevel playing field between different types of personal pension.

### WHAT IS THE SECOND CONDITION?

The Second Condition will be relevant to all transfers which fall outside the First Condition.

Broadly, the transferring trustees must:

- If the receiving scheme is an occupational pension scheme, decide whether the “**employment link**” is met;
- If the receiving scheme is a qualifying recognised overseas pension scheme (QROPS), decide whether the “**residency link**” is met; and
- In all cases, decide whether or not any “**red**” or “**amber**” “**flags**” are present.

### What evidence is needed under the Second Condition?

The regulations (supplemented by tPR guidance) set out in considerable detail the information and evidence which the transferring trustees must seek from the member.

The member must supply the evidence directly to the trustees, not via a representative acting for the member.

- **Transfer to an occupational pension scheme:**
  - The transferring trustees *must* ask for evidence of an “**employment link**”; and
  - They *may* ask for other evidence to help them decide if they have reason to believe that there are red or amber flags present.

- **Transfer to a QROPS:**
  - The transferring trustees *must* ask for evidence of a “**residency link**”; and
  - They *may* ask for other evidence to help them decide if they have reason to believe that there are red or amber flags present.
- **Transfer to a QROPS which is also an occupational pension scheme:**
  - The transferring trustees *must* ask for evidence **either** of an “**employment link**” **or** of a “**residency link**”; and
  - They *may* ask for other evidence to help them decide if they have reason to believe that there are red or amber flags present.
- **Transfer to a receiving scheme which is neither an occupational pension scheme nor a QROPS (so including transfers to UK personal pensions):**
  - The transferring trustees *may* ask for other evidence to help them decide (on the balance of probabilities) if there are red or amber flags present; or
  - They *may* decide that the Second Condition is satisfied without asking for evidence from the member (instead relying on other relevant evidence they may have).

More details of these requirements, including about the standard of proof required, are given below.

### What is an “employment link”?

The member will have an employment link with the receiving scheme where the transferring trustees decide that all of the following apply:

- The member’s employer is a sponsoring employer of the receiving scheme;
- The member has been in continuous employment with the employer for at least three months before the transfer request was made; and
- During this time of continuous employment:
  - the member earned an average gross weekly salary of at least the lower earnings limit (£120 per week in 2021/22); and
  - the sponsoring employer (or both the sponsoring employer and the member) paid contributions to the receiving scheme.

### What evidence is needed of an “employment link”?

- A letter from the member’s employer confirming that the employer is a sponsoring employer of the receiving pension scheme; the date the member started in continuous employment; and amounts of contributions paid to the receiving scheme;
- A schedule of contributions due to be paid to the receiving scheme during the previous three months by the employer (and the member) in respect of the member, plus the dates of actual payment;
- Payslips or other evidence of the member’s pay from the employer during the previous three months; and
- Copies of the member’s bank statements showing receipt of the pay during the previous three months.

### What is a “residency link”?

The member will have a residency link with the receiving QROPS where the transferring trustees decide that the member is resident in the country or territory in which the QROPS is established.

### What evidence is needed of a “residency link”?

- A copy of the member’s formal residency documentation in the country or territory concerned; and
- At least two other items of written evidence that the member is resident in that country or territory (with a certified translation if requested by the transferring trustees). tPR guidance suggests that this could include utility bills, TV subscriptions or registration with local doctors.

## RED AND AMBER FLAGS

### What are red flags?

There will be a red flag if the transferring trustees decide that one of the following exists:

- An **unauthorised person has carried out a regulated activity** in relation to the proposed transfer, in breach of financial services legislation (for example, if an unauthorised person has given financial advice to the member);
- The member requested the transfer following **unsolicited contact** (in breach of the ban on cold calling in relation to pensions);
- The member has been offered an **incentive to transfer**, such as a free pension review, cashback, or access to pension funds before normal minimum pension age. (Incentives to transfer offered by the transferring trustees or the sponsoring employer (such as an enhanced transfer value) do not count for this purpose.);
- The member has been subjected to **pressure to transfer**;
- The transferring trustees have asked the member for evidence or information in relation to the Second Condition but the **member has failed to provide a substantive response** (following a reminder at least a month after the initial request and a second reminder after a further period of one month); or
- The **member has failed to take scam prevention guidance** as required by the transferring trustees (following a decision that an amber flag exists).

### What are amber flags?

There will be an amber flag if the transferring trustees decide that one of the following exists:

- The member has supplied some information but has **not provided all the information or evidence requested** (following a reminder at least a month after the initial request and a second reminder after a further period of one month);
- **Evidence or information** from the member
  - may **not be genuine**;
  - may **not have been provided directly by the member**; or
  - does **not demonstrate the employment link or the residency link**; or
- **The receiving scheme:**
  - includes **high risk or unregulated investments**;
  - has **high fees or unclear charges**;
  - has **investments whose structure is unclear, complex or unorthodox**; or
  - includes **any overseas investments**; or
- There has been a **sharp or unusual increase in transfer requests** to the receiving scheme, or involving the same adviser (or advisory firm).

## WHAT HAPPENS IF THERE'S A RED OR AMBER FLAG?

The consequences of a red or amber flag being found are set out in the table below.

| Is there a red/amber flag ?                        | Consequence for transfer   |
|--|--|
| <b>Red flag present</b>                            | <ul style="list-style-type: none"> <li>• Second Condition is not met</li> <li>• Transferring trustees must not give effect to the transfer (and must notify the member within seven working days)</li> <li>• Member loses their right to a statutory transfer</li> </ul>   |
| <b>No red flags present<br/>Amber flag present</b> | <ul style="list-style-type: none"> <li>• Second Condition is met</li> <li>• Trustees must require member to take scam protection guidance (please see below) <ul style="list-style-type: none"> <li>○ If member provides evidence of having taken scam guidance – the trustees must give effect to the transfer in accordance with member's statutory rights</li> <li>○ If the member does not provide evidence of taking scam guidance – this is a red flag, member loses their transfer right</li> </ul> </li> </ul> |
| <b>No red or amber flags present</b>               | <ul style="list-style-type: none"> <li>• Second Condition is met</li> <li>• Trustees must give effect to the transfer in accordance with the member's statutory rights</li> </ul>  |

## SCAM PROTECTION GUIDANCE

### When must a member take guidance?

Where the transferring trustees decide that an amber flag is present in relation to the transfer, they must require the member to take "specified guidance" provided by MoneyHelper.

tPR expects the transferring trustees to explain to the member, in writing, what the amber flags are intended to achieve before informing them that their transfer application has been assessed as having one or more amber flags. Members who have already taken financial advice should be told the purpose of the scam guidance and how this differs from financial advice.

The intention is that scam guidance sessions will be bookable by telephone or online via the [MoneyHelper website](#) from 30 November 2021. The guidance session must be booked and attended by the member, not by an intermediary acting on the member's behalf.

The transferring trustees must not proceed with the transfer unless the member provides evidence of having taken the scam protection guidance (expected to be in the form of correspondence from MoneyHelper with a unique reference number).

### WHAT IS TPR'S APPROACH?

tPR has recently issued [guidance](#) to help trustees comply with the new requirements.

- Trustees should already be carrying out some form of due diligence on receiving schemes before transferring out members' benefits. tPR expects the additional checks required under the new provisions to form part of trustees' due diligence processes.
- Trustees' approach to transfers should be risk-based. Most transfer requests are expected to be straightforward – and some transfers may proceed with no further checks. This is likely to be the case with transfers to personal pensions run by reputable and well-known insurers. tPR explicitly suggests that trustees may wish to keep a "clean list" of low risk personal pension schemes to which transfers may be made with no or minimal further checks.

### Non-statutory transfers

- Scheme rules commonly give trustees power to transfer an individual member's benefits to another scheme. In most cases, the member does not have an unqualified transfer right – but instead the right is subject to the consent of the employer or the trustees.
- Transfers carried out using a power in scheme rules are not subject to the restrictions described in this note.
- Scammers will no doubt become aware of the possibility of non-statutory transfers and some may encourage vulnerable members to ask to transfer out under a power in the scheme rules as a means of avoiding the red/amber flag scrutiny.
- However, tPR guidance suggests that trustees should still consider the new checks applicable to statutory transfers when deciding whether to agree to a non-statutory transfer request.

## WHAT IS THE STANDARD OF PROOF?

The regulations set out the standards of proof required before the transferring trustees decide whether the First or Second Conditions are met.

Unfortunately, the requirements are complex, with different levels of certainty expected for different decisions, as summarised in the tables below.

| <b>“Simple” decisions</b>   | <b>Standard of proof</b>  |
|---|---|
| <b>Is the First Condition met ?</b>   | Beyond reasonable doubt<br>(Checking whether a scheme is a public sector scheme, or is on tPR’s public list of authorised master trusts or collective DC schemes should be straightforward and will give the certainty required.) |
| <b>Where the receiving scheme is not an occupational pension scheme or a QROPS and the trustees have not made an information request to the member:</b> <ul style="list-style-type: none"> <li>Is a relevant red or amber flag present ?</li> </ul> | Balance of probabilities (the “more likely than not” test)  |

| <b>Decisions where the trustees have asked the member for evidence of an employment link, residency link, or for other information</b>   | <b>Standard of proof</b> |
|--|--------------------------|
| <b>Is one of the following red flags present ?</b> <ul style="list-style-type: none"> <li>Member has failed to provide a substantive response to the information request</li> <li>Member has failed to provide evidence of having taken scam guidance</li> </ul> | Beyond reasonable doubt  |
| <b>Is the following amber flag present?</b> <ul style="list-style-type: none"> <li>Member has supplied incomplete evidence in response to an information request</li> </ul>  | Beyond reasonable doubt  |

### Is any other red or amber flag present ?

Trustees have “reason to believe” the flag is present

## What does “reason to believe” mean?

The regulations make clear that the transferring trustees are expected to decide whether there is a reasonable foundation for believing that red/amber flags are or are not present, on the basis of all the evidence and information available. This may include information obtained in relation to another member, or another pension scheme.

## WHAT SHOULD TRUSTEES DO NOW?

- Prepare a standard letter to be sent to members who apply for a cash equivalent transfer value, or request a transfer of DC benefits, explaining that their transfer will be assessed against the two conditions. (Remember that members may seek this information without having a view to transferring out – for example, in relation to divorce proceedings or as part of a personal financial review – but they still should be sent the standard information.)
- If you use external administrators, ask them for details of their revised transfer procedures, in particular how they intend to keep members informed throughout the process and to check that members are completing any questionnaires themselves (as provision of information through an intermediary is usually an amber flag).
- With internal administrators, check that they are aware of the new requirements and have sufficient resource to make the changes necessary in good time.
- Ensure that your updated processes include keeping records of all information requested and received and of the basis for reaching your decisions.
- Consider establishing a “clean list” of receiving schemes which you believe are low risk. Make sure that the list is regularly reviewed.
- Agree a process with your administrators for deciding which transfer requests will be referred to your trustee board (or to a sub-committee) for a final decision.
- Check the non-statutory transfer provision under your scheme rules, including whether the consent of you or the employer is needed. Be alert for increased interest in non-statutory transfers and, if necessary, review and tighten the checks you carry out before a transfer request is approved.

## HOW WE CAN HELP

Our pension team will be pleased to help you get up to speed with the new requirements, including with updating your transfer documentation and reviews of particularly challenging cases.



This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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