

A guide for combatting scams

➤ Matthew Swynnerton explains PSIG's newly published Interim Practitioner Guide

On 20 March, the Pension Scams Industry Group (PSIG), the voluntary, multi-disciplinary industry group dedicated to combatting pension scams, launched its Interim Practitioner Guide. As a member of PSIG and a legal adviser to its technical committee, I am absolutely delighted to have been involved in drafting the guide, alongside my PSIG colleagues, and to have had the opportunity to contribute to an asset that will both help protect members' benefits from scammers and assist the pensions industry in navigating some complex issues with the potential to delay or block transfers that pose no scam risk.

The Occupational and Personal Pension Scheme (Conditions for Transfers) Regulations 2021 were introduced to address the problematic position trustees and providers were put in under the previous regime: Where a member had a statutory right to transfer, they were obliged to carry out the transfer even if they had concerns in relation to pension scams. The regulations gave trustees and providers greater powers to stop transfers where serious scam concerns (red flags) were identified and to direct members to guidance from MoneyHelper when scam warning signs (amber flags) were identified. Overall, the regulations were an extremely positive development in protecting savers from scams. However, over a year since the regulations were passed, there remain questions over their interpretation. Moreover, there have been concerns that parts of the regulations do not reflect their policy-intent. This has led to an inconsistent approach to transfers across the industry with some legitimate transfers having been delayed

or blocked altogether.

The new guide seeks to address some of the key issues vexing the industry, including: The use of clean lists; discretionary transfers; overseas investments; and incentives. It seeks to help trustees, administrators, and managers steer a pragmatic course between protecting their members by complying with the regulations and delaying or blocking transfers that pose no scam risk.

The guide is divided into three parts. Part A covers statutory transfers, which are subject to the regulations. The level of due diligence required depends on the nature of the receiving scheme. Unless the transfer is to a scheme that poses a low scam risk, such as a master trust, public sector or CDC scheme, checks are needed for the presence of red and amber flags and, in respect of transfers to occupational pension schemes and QROPS, an employment or overseas residency link respectively. The guide includes commentary and examples in relation to how the red and amber flags should be interpreted, and the risks of different approaches, including in relation to the currently problematic flags relating to overseas investments and incentives. It also covers the risks of using, or not using, clean lists.

Part B concerns discretionary transfers. The guide notes that, even though the regulations do not apply to discretionary transfers, where scheme rules permit them, trustees and providers must still apply robust due diligence to the transfer. The guide notes some of the risks associated with processing transfers on a discretionary basis, including that transferring trustees will not receive the statutory discharge from liability (which



they would receive if the transfer was processed on a statutory basis).

Part C includes further guidance on how to provide a good service to members seeking a transfer, including good governance, effective and timely communication, and liaison with scheme administrators to ensure they are complying with the regulations. Finally, when finalising a decision on a transfer, the guide recommends trustees and providers use various resources and bodies to check for suspicious parties or activity, including industry forums, HMRC, and law enforcement reports.

In summary, the guide provides helpful advice and clarification for trustees and providers. Ultimately, it emphasises that, where the risk of a scam is low, the preference is to make the transfer “as quick and easy as possible.” However, elements of the regulations still need to be clarified or amended. The DWP is currently understood to be undertaking a review of the regulations that could result in changes being made to them. PSIG has made it clear that, if this happens, it will update the guide.



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