Pension scams

Matthew Swynnerton (who is a member of the Pension Scams Industry Group) looks at two recent developments in relation to combatting pension scams

On 1 April the Pension Scams Industry Group (PSIG) published an updated version of its code on combating pension scams. On 14 May the DWP published a consultation on draft regulations to restrict the statutory right to transfer. Both of these developments are relevant to trustees of pension schemes when dealing with transfer requests from members.

Updated PSIG code

The code, which is voluntary, represents good industry practice on due diligence. The updated code (version 2.2) takes effect from 1 April 2021 and is available for use in any transfer request processed on or after that date, even if the request for a transfer was received before that date. Version 2.2 reflects recent regulatory and legislative changes, as well as the evolving nature of pension scams. Changes have also been made to improve usability, with the code now divided into five chapters.

- The Framework Document details the context, structure and principles of the code.
- The Practitioner Guide details robust and proportionate due diligence steps undertaken by trustees and administrators assessing the pension scam risk of a requested transfer.
- The Resource Pack contains materials which practitioners can use to undertake this due diligence including example scripts, letter and discharge form wording.
- The Technical Guide details the rationale behind the guide, including legislative and regulatory requirements.
- The Summary of Changes details the changes made since the previous version (2.1) of the code, which was issued in June 2019.

Recent developments that are referred to in the updated code include The Pensions Regulator's pledge to combat pension scams campaign, regulatory developments from the Financial Conduct Authority and Pensions Ombudsman determinations. Other changes include additional questions within the Questions to Ask Members section.

DWP consultation

Another development referred to in the updated code is the regulations being developed under provisions of the Pension Schemes Act 2021 relating to the statutory right to transfer. Those provisions are designed to enable trustees to prevent transfers from occurring if there is a risk that the scheme member might be scammed.

On 14 May the DWP published a consultation on the draft regulations which it is proposed will be introduced in the autumn. In summary, the draft regulations require trustees or scheme managers of occupational and personal pension schemes to ensure that at least one of four conditions is met before making a transfer.

The first condition is to confirm that the transfer is to one of a number of types of receiving scheme which present a low scams risk. These types of scheme include: authorised master trusts; and pension schemes operated by an insurer that is registered and authorised by the Financial Conduct Authority and authorised by the Prudential Regulatory Authority.

If the transfer is to an occupational pension scheme that is not one of the types of scheme in the first condition, the member will need to demonstrate an employment link with that proposed receiving scheme. If the proposed receiving scheme is a Qualifying Recognised Overseas Pension Scheme (QROPS), the member will need to demonstrate an employment link or residency in the same financial jurisdiction as that in which the QROPS is established.

If the conditions above do not apply, the trustees must decide whether any 'red flags' are present, in which case the transfer may not proceed. The proposed red flags include that: (1) a person or firm without the appropriate regulatory permission has provided financial advice to the member in relation to the transfer; and (2) the member's transfer request was made further to unsolicited contact about making a transfer from a party previously unknown to them. If no red flags are present, but any 'amber flags' are present, the transfer can only proceed if the member provides evidence that they have taken scams guidance from the Money and Pensions Service. The proposed amber flags include that there are high risk or unregulated investments included in the receiving scheme.

Conclusions

Trustees should use the updated version of the PSIG code for transfers processed on and after 1 April, familiarise themselves with the DWP's proposed changes to the legislation and be ready to update their transfer processes when the regulations come into force.

Written by DLA Piper pensions partner, Matthew Swynnerton