



THE SOCIETY OF PENSION  
PROFESSIONALS

*making pensions work*

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Dear Kirsty

## **SPP RESPONSE TO PENSION SCAMS: EMPOWERING TRUSTEES AND PROTECTING MEMBERS CONSULTATION**

We welcome the opportunity to respond to this consultation.

In summary, we are supportive of any moves that aim to prevent scams and which empower trustees and managers of pension schemes to take action where they have concerns of scams. We also understand the balancing act that government faces in considering how to allow individuals to have control of their pension choices while protecting them against unscrupulous scammers. For these regulations to be effective it is important that the regulations are clear and unambiguous and that they are accompanied by appropriate guidance to assist trustees and scheme managers in applying them. In our response we have identified a number of areas where clarification and guidance would be helpful.

### **Detailed Response**

#### **Q1. Please provide details of any additional types of receiving scheme to which transfers should proceed without additional checks, including how they can be identified for the purposes of the regulations.**

The types of receiving scheme identified all appear to present a low risk of scams. It would be helpful to trustees and administrators if guidance accompanied the regulations setting out how to verify that a proposed scheme fell into each of the categories identified. For example, we have not been able to identify a specific official register showing bodies authorized by the PRA.

We understand that there will be many pension schemes which regularly accept transfers without causing any concerns of a scam that will be disappointed that they do not fall into any of the

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categories under the first condition. However we have not been able to come up with any watertight definition that would encompass those schemes and exclude schemes about which concerns exist. There may be some scope for including Occupational Pension Schemes sponsored by a large employer (e.g. in the FTSE 100 or FTSE 250) if a suitable definition could be drafted.

We note that Regulation 3(6) does not permit the trustees or administrators to seek evidence from the member to assist them with confirming that the receiving scheme is established or authorised as defined in the regulations. We think that guidance should clarify that this would not prevent trustees or administrators seeking evidence that the proposed receiving scheme was the suitably established scheme and not a scheme with a similar name.

**Q2. To what extent is the evidence requirement set out in the regulations to demonstrate an 'employment link' sufficient and how could it be strengthened?**

The evidence being requested seems reasonable if trustees and scheme administrators are able to accept the documents they receive at face value. For example there is no method obvious to us to verify the authenticity of a pay slip. We are also aware of a number of websites which will sell individuals a false bank statement showing whatever transactions they request.

We would point out that while a Schedule of Contributions or Payment Schedule will show that contributions are being paid to the scheme by an employer they will not normally provide evidence that contributions have been paid for or in respect of a particular individual.

We note that Regulation 4(3)(d) requires evidence that both the member and the employer have both contributed to the scheme during the last 3 months. In many cases nowadays members of occupational pension schemes make their contributions by a salary sacrifice arrangement and don't directly contribute to the scheme. We believe it should be clear (either in the regulations or in accompanying guidance) that contributions via a salary sacrifice arrangement meet this condition.

Similarly, although we believe they will be rare nowadays, there may still be some generous employers that offer non-contributory scheme to employees. It would be useful to have clarification on whether it is possible for such an employee to demonstrate the employment link as they would be unable to show evidence that they were contributing to the scheme.

We are not convinced that evidence that a previous transfer has been made in the previous 12 months to the same scheme, as envisaged by Regulation 5(2), is sufficient evidence to permit a transfer to proceed. This is in part because circumstances may change over a 12 month period (e.g. the member may have left employment) and in part because it means trustees and administrators are placing great reliance on the processes and due diligence of the scheme that paid the initial transfer. There would also be a concern that the scheme that made the original transfer could be held responsible for later transfers that used the initial transfer as evidence.

**Q3. How could the evidence requirement for 'residency link' work in practice?**

Administrators already have to establish residency for a transfer to a QROPS in order to establish whether the Overseas Transfer Charge applies. This can often be difficult as pension scheme administrators are not experts in overseas tax regimes or documentation and there is currently little or no guidance available.

Our experience is that although there are QROPS established in a large number of countries the vast majority of QROPS transfers we see are to a relatively small number of jurisdictions. such as Australia, Gibraltar Ireland, Malta and New Zealand. Guidance setting out evidence of residency likely to be available from residents in those jurisdictions would be extremely helpful in ensuring

the smooth application of these regulations. We believe that trustees and administrators will have difficulty in independently verifying whether residency criteria have been met and it will be important that administrators and trustees are able to accept documents they receive at face value

We are not convinced that evidence that a previous transfer has been made in the previous 12 months to the same scheme, as envisaged by Regulation 7(2), is sufficient evidence to permit a transfer to proceed. This is in part because circumstances may change over a 12 month period (e.g. the member may no longer be resident in the same country) and in part because it means trustees and administrators are placing great reliance on the processes and due diligence of the scheme that paid the initial transfer. There would also be a concern that the scheme that made the original transfer could be held responsible for later transfers that used the initial transfer as evidence.

Our understanding of these regulations is that it is intended that each EU member state would be treated as a separate financial jurisdiction. This differs from the residency test that applies for the Overseas Transfer Charge where, in effect, all EU countries, the UK and Gibraltar are treated as one financial jurisdiction. It will be important that it is made explicitly clear in the legislation or guidance (and preferable in both) that the residency tests are different.

**Q4. How should the ‘red flags’ as set out in the regulations work in practice?**

One of the big challenges that pension schemes face in preventing transfer scams is that scammers are adept at priming scheme members on how to respond to questions from schemes and may complete questionnaires for members to sign. This can make it extremely difficult for trustees and administrators to identify red and amber flags where the member and the scammer deliberately hide them. If that turns out to be what happens in practice then this part of the regulations may not prove effective.

We note that the regulations as drafted would identify a red flag if a member fails or refuses to respond – however it is less clear whether it would be a red flag where a member responds unsatisfactorily – for example by providing a response which the trustees or managers reasonably believe has been written for them by a scammer (perhaps because it is identical to another member’s response or because the email trail demonstrates this).

We welcome that the regulations allow decisions to be made on the evidence available – but experience suggests that once a transfer has turned out to involve a scam attempts will be made to seek compensation from the transferring scheme. This is likely to make trustees and administrators risk averse and to carry out detailed due diligence on transfers where the first three conditions are not met.

It will be important that guidance covers what is expected of trustees and administrators where the regulations use terms like “reasonable belief” or “on the balance of probabilities”.

**Q5. How should the ‘amber flags’ as set out in the regulations work in practice?**

Our comments in response to Question 4 regarding trustees and administrators being risk averse applies equally here.

Many of the amber flags are subjective and in many cases the trustees and administrators dealing with transfers will not be experts in the charging and investment structures of Defined Contribution schemes. It will therefore be important that guidance is available to assist in assessing the presence of amber flags. One area that may require guidance is setting out what is expected of schemes where members respond “don’t know” or “not sure” to questions.

An alternative approach might be to allow trustees to direct members to guidance for MaPS if they feel they do not have sufficient expertise to carry out the “amber flag” analysis.

We have commented above on our concerns around a previous transfer from another of the member's schemes having been paid in the previous 12 months to the receiving being used as evidence for allowing a transfer to go ahead. If that provision is to remain in the final regulations we would suggest that the trustees or manager of a transferring scheme being aware that another scheme has refused to transfer the member's benefits to the receiving scheme in the previous 12 months should be included as an amber flag.

**Q6. Do you have any views on how the requirement to take guidance can work in practice when the pension saver has already taken financial advice?**

Where a member who has already taken financial advice is referred for guidance we think one of the main requirements of the guidance will be to explain to the member how the advice process should have worked. This will assist the member in assessing whether the advice they received was in line with the FCA's expectations. The content of the FCA's video entitled "Defined benefit pension transfer process explained"<sup>1</sup> is a good indicator of the sort of content that might be appropriate.

If the member is transferring against the recommendation of their regulated adviser then the guidance should encourage the member to reflect on their reasons for doing so.

We note that the member will need to produce evidence that they have undertaken a guidance session with MaPS. It will be important that either MaPS provide that evidence in a format that cannot be easily duplicated or a facility is available to allow trustees and administrators to verify that evidence.

There may be some merit in considering whether a member who has recently taken guidance from Pension Wise could be exempted from taking a second set of guidance from MaPS. We do not believe there is a simple answer to this but having to take two lots of guidance may result in a poor member experience.

Where members are required to take guidance from MAPS it will be important that MAPS have the resources to provide the guidance within a reasonably short timescale. It will also be important to give trustees and administrators an indication of how long they should allow a member to arrange a guidance appointment with MaPS and provide evidence of this. If this is not made clear to both schemes and members there is a risk that cases could remain open for an extended period. Equally it would be unfortunate if members were to lose a statutory right to transfer through being unable to obtain an appointment with MaPS.

**Q7. Annex 3 sets out the proposed list of standard questions that trustees and schemes managers should use to help determine the presence of red or amber flags. Do these questions provide a comprehensive list, which if any questions are not needed and what other questions should be included?**

The questions seem reasonable and are closely aligned to the PSIG code on combatting pension scams. One question which might be reasonably added from the PSIG code is whether the member has had any other transfers to the same scheme refused.

We note that none of the questions explicitly cover whether the member is being pressured into transferring.

We have some comments on the wording of individual questions:

- In question 4 as drafted it would be important to give the member some understanding of what is meant by the term "independent" in the context of advice.
- In question 6(a) the question "where do you expect the money to be invested?" isn't clear whether it is requesting information about geographical location, investment manager or fund name.

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<sup>1</sup> <https://www.fca.org.uk/consumers/pension-transfer/advice-what-expect>

It is important however that no set of questions is seen as definitive and the only questions that can be asked. Pension scammers will look to exploit any opportunity and can quickly change their methods. It is important that trustees and administrators are free to adapt their due diligence questions to reflect experience and any trends identified in the practices of scammers. Paragraph 50 of the consultation document could be read to suggest that additional and / or alternative questions would not be acceptable

### **General Comments**

It is not immediately clear to us from the draft regulations how they would apply to any transfer processes underway at the effective date of the regulations. With statutory transfers from Defined Benefit schemes the request for a statement of entitlement can be received some 3 months before the actual request to transfer will be received. With the potential timescale in which these regulations are being introduced this could mean that quotes contained in statements of entitlement issued before the regulations are laid could be accepted after they are implemented. If the regulations applied to that transfer then delays are likely to arise as the documentation completed by the member and receiving scheme will not reflect the new regulations and the members would have to produce evidence that they were not informed of when the quote was issued.

We would suggest that transitional arrangements similar to those that applied when the requirement to take advice before transferring Safeguarded benefits to Flexible benefits was introduced should apply.

Even with transitional arrangements these regulations will have a significant impact on the processing of transfers. It is important that industry is given a reasonable time period between the regulations being laid and taking effect to allow administrators to set up systems and processes in line with the final version of the regulations.

The nature of these regulations means they only apply to statutory transfers. In some contracted based schemes members who do not have a statutory right to transfer may have a contractual right to transfer. This may limit the effectiveness of these regulations.

### **Consistency of drafting**

We think that the draft regulations could be clearer on how conditions 1 to 4 interrelate. Some consistency of approach and language may to be needed in order to make them work – in particular references to particular conditions 'applying' or 'being satisfied', which are two quite different things.

For example, reg 2(1) says that the transfer right applies if one of the conditions 1 to 4 is satisfied and reg 10 reflects this too. The conditions themselves take a different approach, as follows.

Condition 4 says that it applies if none of the first three conditions applies. Reg 4(2) says that condition 2 applies unless condition 1 applies – so a point to be made is that condition 4 never "applies" to an OPS transfer because condition 1 or 2 will always apply – perhaps the regs should say "is satisfied".

Then regulation 6(2) on condition 3 refers to condition 2 either not applying or applying but not being satisfied, which is different to the approach in regulation 4(2) on condition 2 (see above).

Regulation 8(2) says that condition 4 applies if none of conditions 1 to 3 applies. But that contradicts regulations 2(1) and 10: "at least one of the conditions ... is satisfied".

Yours sincerely

**Stuart Reid**

Chair, Administration Committee, SPP

**Fred Emden**

Chief Executive, SPP

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