



October 2015

# Transfers to improper vehicles: the trustee's perspective



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Transfers are undeniably a hot topic (and not only in the football world).

Pension trustees have **much to consider** before making a transfer payment, and **not all of it is straightforward.**

Regulation, pension freedoms and potential scams can all impact transfer decisions.

Trustees need to consider and balance these **without causing undue delay** for members or breaching any laws.

The Pensions Regulator has produced helpful guidance for trustees on what action to take if a pension scam is suspected. This includes a 4-step plan and action pack, along with leaflets and information that can be given to members.

Additional guidance on the due diligence expected to be undertaken when dealing with transfer requests is set out in a voluntary code of practice aimed at trustees, providers and administrators.

## Time is not on our side

Dire warnings do not appear to be sufficient to deter members who want to transfer. An increasing number of cases are being referred to the Pensions Ombudsman by **members alleging delays** in processing transfer values as a result of trustees investigating potential liberation schemes.

This causes **a dilemma for trustees** when considering whether to block a transfer request. Trustees are effectively damned if they do and damned if they don't - a point illustrated in a recent Ombudsman case:

A complaint of financial loss was brought by a member against the trustee as a result of a delay in processing their transfer.

The Ombudsman upheld the complaint, finding the trustee had breached its duty in failing to complete the transfer and ordering compensation be paid to the member.

As a parting shot, the Ombudsman added that **one month** would have been a reasonable timescale to complete the transfer, **not the six months allowed** in the regulations.

## The complication of pension freedoms

Pension reforms introduced from 6 April 2015 have not helped trustees. The new flexibility has inevitably created a **demand from members to transfer** to arrangements that offer the freedoms they desire. However, too often, members are **being enticed** by individuals or arrangements appearing to offer more than the authorised payments anticipated by HMRC.

Some measures are in place to protect members with existing DB rights - principally the requirement to take 'appropriate independent advice' for transfers over £30,000 or when converting DB rights to a defined contribution (DC) pot. Trustees are **obliged to check the member has received advice** and future regulations will set out what they must do and when the check must be made.

However, there are no similar safeguards for DC members. They do not need to take regulated advice before transferring, although trustees usually strongly recommend they do so.

### An example

A deferred DC member under age 55 requested a **transfer to a QROPS based in Hong Kong**. The member was known to our co-trustee and was considered not to have a high level of financial awareness. This made the transfer to a QROPS seem unusual, and was compounded by the fact his fund value was relatively small. The member was also known to have money problems and be keen to access his fund.

On investigation, it was established the QROPS would allow the member to access his funds early. We ensured the Regulator's warning leaflets were sent to the member and asked him to complete a questionnaire designed to **find out if he had taken financial advice** and was aware of the penalties of taking his benefits early.

The member's responses were probably typical of many trustees' experiences; no independent financial advice had been taken and, yes, the member was well aware of the tax penalties and potential for losing some or all of his money in charges. All the member wanted was to access his pension fund and he was **not concerned by the potential consequences**.

We informed the member that as he was 54 years old he would be able to legitimately access his pension fund within 12 months. Fortunately, he decided on this course of action and did not to proceed with the transfer.

## Acting in a member's best interest

Despite the complaints of delays, trustees do often get it right...

### An example

We are trustee secretary for a scheme administered by Punter Southall Administration Ltd (PSAL). A member was denied a transfer out to what **appeared to be a liberation vehicle** following rigorous checking by PSAL for scams.

Subsequently, the member wrote to the trustees to **thank them for preventing the transfer** from going ahead. The member explained **his friend** (who was a member of a separate pension scheme, unconnected to PSIT and PSAL) had proceeded to transfer his benefits to the same suspected liberation vehicle and **did indeed lose a substantial amount of his benefits** ...

## What do you think?

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