



Response to the DWP's Consultation on Empowering Trustees and Protecting Consumers

Submission by the Transparency Task Force, June 9th 2021

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector.

The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a

“whole system solution for a whole-system problem” as described in [our recently published book](#)

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?”

For further information about the Transparency Task Force see: <http://www.transparencytaskforce.org>

Introduction

We believe that there is an urgent need to reform the pensions market because far too many people are exposed to the risk of pension scammers. The typical pension scheme member lacks the knowledge and experience to make well-informed, balanced decisions about their retirement provision because pensions and investments is not their area of subject-matter expertise.

As such, most people are vulnerable to being manipulated by unethical “professionals” and criminals and ought to be properly protected by those they have entrusted to care for their interests i.e. pension scheme trustees. However, pension scheme trustees are often denied the opportunity to step in and intervene if they suspect the scheme member may be carrying out a transfer that is not in their best interest, for example if the scheme member may have been tricked by a scammer.

Furthermore, when George Osborne announced Pension Freedoms, he created a great deal of freedom and choice, but without putting in sufficient safeguards to protect pension savers from the risk of criminals and unethical “professionals.”

Therefore, the combination of trustees that are powerless to intervene to do the primary job they have been entrusted to do, to protect scheme members’ interests; and the introduction of freedoms that put scheme members at risk of jeopardy have created the “perfect storm” that we are witnessing today.

It is clear that the prudent and protective policymaking that didn’t happen when pension freedoms were being introduced needs to happen now. We can look back with certainty today in the full knowledge that the grave warnings about the risk of a huge upsurge in pension scams that some were making at the time shouldn’t have been ignored.

Furthermore, the law needs to be changed to enable trustees to do their job of protecting the interests of scheme members.

We therefore welcome the DWP's work to empower trustees so that they can do a better job of protecting the public from the very real risk of financial jeopardy as a consequence of transferring their pension.

We salute the work of the Pension Scams Industry Group

We believe that the Pension Scams Industry Group is doing a very good job in helping to drive forward the pension industry's attitudes and approach to the very serious problem of pension scams.

We find ourselves closely aligned to their views and this is unsurprisingly reflected in our consultation response, which has been very heavily influenced by theirs.

Response to Questions

Question 1

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.

Please refer to Question 4 in respect of our proposed approach to the issue of PRA and FCA registered firms excluding some entirely legitimate SIPP providers. We did consider proposing the removal of this criteria from Condition 1 entirely but are conscious of the "safe harbour" commitment by the Government in the previous pension scams consultation and the DWP reference to this in the recent ABI discussion. We also understand why the Government chose not to stand by their commitment to exempt all FCA regulated personal pensions.

For draft regulation 3(4), we think there may be some missing words – "where 'operated by' includes where the pension scheme is operated by a subsidiary undertaking of a parent undertaking".

For draft regulation 3(6), the transferring scheme "may not require that the member provide evidence for them to make that confirmation", although the transferring scheme may be able to seek this information from other sources. Preventing the transferring scheme from seeking evidence from the member may inhibit the transferring scheme from investigating further if it has suspicions that the receiving scheme may be falsely purporting to be a scheme which would satisfy the First Condition.

Question 2

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

Our suggestion would be that the requirement should be for the Second Condition plus the Fourth Condition to be met or the Third Condition plus the Fourth Condition to be met. These qualifications would afford pension scheme members much better protection.

Should the Conditions remain as proposed, there would be a risk that a scammer could create a dummy employment relationship to satisfy the employment link condition under the Second Condition. In that case the member may have a statutory right to transfer even if the transferring scheme's due diligence has identified suspicions about the transfer (which would mean that the requirements of the Fourth Condition would not be satisfied if they were applicable).

Similarly if the residency link is established for a transfer to a QROPS the transfer will have satisfied the Third Condition even if the transferring scheme's due diligence has identified other suspicions about the transfer (which would mean that the requirements of the Fourth Condition would not be satisfied if they were applicable).

A fall-back protection of the Fourth Condition for OPS and QROPS transfers could be established by amending draft regulation 2(1) towards the end replacing "unless at least one of the conditions prescribed in these Regulations is satisfied" with "unless one of the following applies: (a) the First Condition is satisfied; (b) the Second and Fourth Conditions are both satisfied; (c) the Third and Fourth Conditions are both satisfied; or (d) none of the First, Second or Third Conditions applies but the Fourth Condition is satisfied." 8(2) would need adjusting

slightly if such an approach was taken: “The Fourth Condition applies to a transfer in respect of which none of the First, Second or Third Conditions applies or in respect of which the Second or Third Conditions do apply and have been satisfied”.

It may also be helpful to include a definition in the regulations of "sponsoring employer".

It is also possible that a member may not have made any contributions to a legitimate receiving scheme, for example if the member had ceased making contributions as a result of a salary sacrifice arrangement or if (perhaps more unusually) the scheme is non-contributory. It could be argued that a salary sacrifice arrangement would meet the requirement for the member to have contributed to the transferring scheme, but this could be clarified.

We believe that at least two pieces of employment evidence should be required, we have provided a list of potential evidence items below:

- A communication from a company director stating the individual is employed with the firm
- A copy of a payslip (within an agreed period)
- A copy of multiple (x3 months?) bank statements showing receipt of wages
- Pension contribution statement for an agreed period showing both member & employer contributions
- P60 or P45

Question 3

How could the evidence requirement for ‘residency link’ work in practice?

In terms of Condition 3 and QROPS transfers, our first comment would be the need for “financial jurisdiction” to be suitably defined both in the regulations and in the TPR and FCA guidance. As far as the evidence requirement for residency is concerned, the Common Reporting Standard Exchange of Financial Account Information in Tax Matters Second Edition may be of value.

We would propose that the member must provide at least two of the following documents:

- Utility bill
- Bank statement
- Driving License (if changed)
- Visa

- Passport (if changed)
- Rent/Lease or Mortgage agreement

Question 4

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

In order to ensure that paragraph 41 of the consultation is fully reflected in the regulations themselves, we propose the following amended wording for Regulation 8(3):

“8(3) The Fourth Condition is satisfied where either of the following requirements are met–

- (i) (a) none of the circumstances in paragraph (4) (“the red flags”) are present in respect of the transfer; and
- (b) none of the circumstances in paragraph (5) (“the amber flags”) are present in respect of the transfer; or
- (ii) the trustees or managers of the transferring scheme have a reasonable belief that, notwithstanding the actual or possible presence of one or more of the red flags and the amber flags, there is no material risk of a pension scam.”

A definition of “no material risk of a pension scam” could be inserted into Regulation 9 as a new 9(2) and could read as follows:

“(2) In respect of regulation 8(3) reasons for the trustees or managers of the transferring scheme deciding there is “no material risk of a pension scam” include:

- a. their existing knowledge of the provider/trustee of the receiving scheme or the receiving scheme itself;
- b. current regulatory and/or industry guidance regarding transfers between pension schemes; and/or
- c. an explanation given by the member for the purpose of the transfer.”

This would enable transfers to bona fide pension providers to be executed smoothly and without delay.

An alternative approach where the transferring scheme permits discretionary transfers may be to amend Regulation 11 to make it clearer – perhaps along the lines of:

“These Regulations apply to transfers of cash equivalents pursuant to the 1993 Act and do not override any provisions of a transferring scheme relating to discretionary transfers, to the extent that there is a conflict, including allowing trustees or managers of a transferring scheme to apply any discretion to allow a transfer irrespective of whether any of the First to Fourth Conditions are met.”

Question 5

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

We believe that guidance is key here and anything which would bring further clarity to the interpretation of the amber flags and bring these to life (with perhaps examples of what is meant) would be welcome. In particular, “high fees”, “high risk” and “unorthodox” are examples of where such additional information may be of help.

In addition, draft regulation 8(7) provides that the red flags under 8(4)(c) to (f) and the amber flags under any of the sub-paragraphs in 8(5) are present where the trustees have a reasonable belief that the relevant circumstances are present. However, the amber flag in 8(5)(d) (the receiving scheme includes overseas investments or an overseas adviser has advised the member in relation to such investments) does not require an assessment in the same way as the other amber flags in 8(5). Regulation 8(7) should perhaps therefore be reworded to apply only to certain paragraphs of 8(5) (in the same way that it only applies to certain paragraphs of 8(4)), unless the qualification of reasonable belief was perhaps still intended to be included for 8(5)(d) in case the position is not completely clear from the trustees’ due diligence.

In addition, a failure or refusal by the member to respond to a request is a red flag (draft regulation 8(4)(a)), but it is not clear how an inadequate response should be treated. An inadequate response is particularly likely in respect of questions about amber flags which are difficult to assess.

For draft regulation 8(4)(c) there is an exception where the receiving scheme includes overseas investments and an overseas adviser has advised the member on those investments, but we assume that this exception should only apply to the advice given in relation to the overseas investments and should not give a more general pass in relation to financial advice given to the member in relation to the transfer or a recommendation that the member make the transfer.

The draft regulations could be clarified in this regard. Can the trustees or managers of the transferring scheme "have a reasonable belief" that the red or amber flags are present (under draft regulation 8(7)) if inadequate responses have been provided to their questions or should this be switched around so that onus is on the member to demonstrate that that red and amber flags are *not* present?

Question 6

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?

We do not consider it appropriate to exempt transfers where FCA regulated advice has been taken. The proposed amendments outlined in our answer to Question 4 should enable only transfers where significant concerns remain (in spite of the provision of regulated advice) to be impacted. In our view, we should not see large numbers of perfectly appropriate advised transfers being directed to MaPS for guidance. We are conscious that many sophisticated investors may want to avail themselves of unusual or higher-risk investment opportunities. We do not consider that the DWP proposals (if amended in line with our suggestions) will adversely impact such transfers.

Question 7

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?

In our view, the questions should identify the key warning signs of a transfer. Additional questions such as those included within the [PSIG Code on combating pension scams](#) may further enhance the due diligence of the transferring scheme and enable the trustees to better understand the member's reasons for transferring.

Furthermore, we would like to propose one additional question – "Do you know if your funds are going to be protected by the Financial Services Compensation Scheme (FSCS)?"

Conclusion and request for further consultation

We wholly support the work that PSIG is doing and we are grateful to have the opportunity to provide a response to this consultation based upon their work, with which we find no good reason to disagree with or move away from.

We are also very pleased that the DWP is looking to make meaningful reforms to better protect pension scheme savers.

Our request for further consultation is in keeping with the spirit of this consultation, which is all about protecting the interest of pension scheme savers:

We believe that many pension scam victims are innocent victims of crime who have suffered life-changing financial losses with incalculable emotional anguish as a direct result. We recognise this is a complex topic with a multiplicity of issues to be considered and weighed up. However, we strongly believe that HMRC ought to change their approach to the way they deal with pension scam victims. They are known to be needlessly harsh and we believe they are “profiting from the proceeds of crime” when they chase pension scam victims for tax payments. We find that to be an indefensible position to take and we believe that HMRC are failing to use the discretion they have to approach matters in a more humane way.

The argument that they “must simply follow tax law” is superficial and does not stand up to scrutiny.

We would therefore like the DWP to open a consultation on “Exploring alternative ways to deal with the tax treatment of pension scam victims” or similar, whereby the term ‘pension scam victims’ is deemed to be those that are able to provide firm evidence that they were the victims of crime.

Thank you.

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