

Transfer regulations – first Pension Ombudsman decision

In November 2021 new pension transfer regulations were brought in to help the fight against fraudsters. The rules give pension scheme trustees the power to stop transfers if they think the member is at risk of being scammed.

Overall, the changes have been positive. Previously SSAS were often the pension vehicle of choice for criminals, and tightening up the controls on the employment link here has been helpful.

However, there have been a few stumbling blocks along the way, and some delays when transferring to even the most straightforward SIPPs.

One of the biggest issues is that the regulations state that if the receiving scheme includes any overseas investments, then an amber flag is present. And an amber flag means the trustees of the ceding scheme should send the member off to MoneyHelper for a safeguarding appointment before a statutory right to transfer exists. As AJ Bell offers some overseas investments, your transfer may therefore have been referred to MoneyHelper, even though it was recommended by your adviser.

It's fair to say that DWP had underestimated the number of referrals MoneyHelper were going to get. Although things have calmed down a bit now, there was a period when the wait for an appointment was over two months.

The Pensions Ombudsman (TPO) released its first decision on the transfer regulations at the end of 2023, and unsurprisingly the case related to overseas investments. The complaint was based on the fact the trustees had forced the member to go to MoneyHelper due to these investments, and as a result of the delay this caused, the member's transfer value was reduced.

In the case concerned, the only overseas investments held by the receiving scheme were about as simple as it gets: global funds run by FCA authorised and regulated UK based fund managers. Hardly high-risk investments. And guidance issued in July 2022 by The Pension Regulator (TPR) states:

“The specific concern here is not whether the investment is in, for example, a global equity fund but whether the investment is in assets or funds where there is a lax, or non-existent, regulatory environment or in jurisdictions which allow opaque corporate structures.”

However, TPO rejected the complaint on the basis that the trustees of the ceding scheme had not acted unreasonably in referring the member to MoneyHelper, as they were following regulations. Interestingly though, the Ombudsman noted in his ruling **“it appears the wording of the Transfer Regulations and intended practical application may not be aligned.”**

So, what does this mean for SIPP?

Virtually all SIPPs allow investments in global funds. Thankfully, most ceding schemes are taking a pragmatic approach, as the rules do allow schemes to use their discretion and allow the transfers through where due diligence has been carried out and there is a low risk of a scam. However, under the current rules there will still be some trustees who insist on a referral, and the TPO decision has just backed up the fact that they are entitled to do so.

Following their review of how the regulations are working, DWP are currently looking at amending the rules. Let's hope that they come up with some wording to more closely align the regulations with their intentions.