THE SOCIETY OF PENSION PROFESSIONALS
making pensions work

The Society of Pension Professionals (SPP) response to Protecting Pension Savers - Proposals to Amend the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

1. Executive summary

1.1. **The proposed employment-link red flag (which technically applies to all occupational pension schemes, though it primarily impacts SSAS in practice) is unlikely to work as intended in practice.** Members often cannot produce full evidence even in legitimate arrangements, so the change may not materially improve transfer safeguards.

1.2. **Without revising the "substantive response" definition, the new red flag will not prevent transfers effectively.** Partial evidence could still allow cases to be treated as amber rather than red.

1.3. **There is a risk of unintended friction for legitimate SSAS and occupational scheme transfers.** Historic arrangements and non-standard employment structures are particularly affected.

1.4. **The SPP is not aware of new or emerging scam risks requiring further immediate tightening.** Some SSAS governance issues reflect poor administration rather than fraud.

1.5. **Focusing solely on the employment link is unlikely to significantly improve scam prevention.** Evidence gaps mean the approach will not consistently distinguish risk cases.

1.6. **A SSAS-specific evidential regime would be difficult to implement effectively.** It would likely add complexity without clear benefit.

1.7. **We support broadening Condition 1 to allow assessment of "reputable" schemes.** This could streamline transfers and reduce unnecessary friction.

1.8. **What constitutes a "Reputable scheme" should be supported by high-level factors and TPR (The Pensions Regulator) guidance.** The assessment of "reputable" schemes should remain subjective. Trustees should not be held to an overly rigid objective standard.

1.9. **SSASs and potentially QROPS may not fit neatly within a "reputable scheme" concept.** Their structure and profile make this classification difficult.

1.10. **Key indicators should include sponsor credibility, third-party involvement, and scheme longevity.** These better reflect real-world trustee assessments.

1.11. **Use of the new Condition 1 gateway should be optional, not mandatory.** Some schemes will need to rely on Condition 2 processes instead.

1.12. **The 12-month guidance exemption should be limited to repeat transfers to the same scheme.**

1.13. **Minor drafting clarifications are needed for legal certainty.** This includes alignment with defined terms and confirmation of interpretation of list provisions.

2. Consultation response

Q1 Do you foresee any issues with the planned wording of the flag in regulation 8 of Annex A?

2.1. The new red flag applies when a member has provided all the evidence required to demonstrate the employment link, but the evidence does not actually demonstrate the link. We do not consider this wording will actually achieve the policy intention for the following reasons.

2.2. In our experience, it is often the case that a member of a SSAS cannot provide all of the evidence to demonstrate the employment link. This may be, for example, because the SSAS was set up some time ago and contributions are no longer paid and / or the member is a director of the sponsoring employer and they do not receive any salary. The inability to provide all of the requested evidence can arise in respect of SSASs set up for entirely legitimate reasons, as well as those set up for nefarious reasons.

2.3. Under the current Regulations, it is often possible to argue that a "substantive response" has been provided and so there is an amber flag under Regulation 9(2). A "substantive response" is defined as:

"*one that provides **at least part** of the evidence or information requested, so that the trustees or managers of the transferring scheme can **either** reach a decision that **part of the employment link** or residency link **is demonstrated**, **or** that the red flags in paragraph (5) are not present*" [emphasis added]

2.4. In our view even if the new red flag is added in Regulation 8, it would still be possible for a transfer to a SSAS to proceed where only part of the employment link has been demonstrated. For example, if a member was able to provide evidence that:

(i) their employer is a sponsoring employer of the receiving scheme; and

(ii) they are in employment with the sponsoring employer (for example, they are a director with an employment contract) and this employment has lasted for a continuous period of at least 3 months,

2.5. then two of the four limbs of the employment link would have been satisfied. There could be an argument, therefore, that part of the employment link is demonstrated. Members and/or their advisers would therefore be able to argue that the transfer should be treated as an amber flag (which is what often happens in practice now) and, therefore, there will be a statutory transfer right once the member has attended their MoneyHelper appointment.

2.6. The new red flag would not be present because the member would not have provided all of the evidence required.

2.7. Therefore, we do not agree that the new red flag will empower scheme providers to refuse the transfer unless there is also an amendment to the definition of "substantive response" or an amendment to the new red flag.

2.8. If DWP does decide to amend the definition of "substantive response", then it should ensure that the drafting does not prevent all transfers to occupational pension schemes where an employment link isn't evidenced. This is because SPP members do receive transfer requests from, for example, 1) deferred members of a scheme wanting to transfer benefits into their ex-employer's scheme for legitimate reasons, and 2) active members of genuine schemes who do not have three months of payslips or who do not earn above the LEL, who want to transfer but cannot demonstrate an employment link.

2.9. We also note that the requirement to provide a schedule of contributions, can result in difficulties as some employers may consider this confidential and not want to share it. We acknowledge, however, that DWP may consider this to be an important element of evidencing the employment link that needs to be maintained.

2.10. One option could be to amend the definition to exclude a partial response on the employment link where the evidence requested was in connection with a transfer to a SSAS. While there is no definition of a SSAS in legislation, it may be that the definition of "relevant small scheme" in the Occupational Pension Schemes (Scheme Administration) Regulations 1996 or "small scheme" in the Occupational Pension Schemes (Investment) Regulations 2005 could be used.

Q2 Are you aware of any emerging concerns, risks or scam activity, such as those arising in SSASs or other pension arrangements, where existing consumer protections or regulatory safeguards may not be sufficient?

2.11. We are not aware of any particular emerging concerns, risks or scam activity.

2.12. However, we are aware that some SSASs are poorly administered as the trustees are lay individuals who are not experienced in pension scheme governance or pension tax matters. This is not a scam risk, but it could have implications for the pension benefits of members of these schemes – and it is worth noting that the trustees will often be members for these schemes..

Q3 Do you consider the focus on the employment link to be an appropriate and effective measure for addressing the concerns relating to SSAS transfers?

2.13. Based on our experience, we expect that for a large number of transfer requests to a SSAS all the evidence required by regulation 10(1)(a) or (c) will not be provided because of the nature of SSASs. As explained above, we do not, therefore, consider that the new red flag will be that helpful in practice.

2.14. In our experience, legitimate SSASs will hold substantive assets that are connected to the business of the sponsoring employer (for example, a property from which the sponsoring employer's business is conducted). A new evidence requirement could, in theory, be introduced for SSASs relating to the assets they hold but we suspect this would be difficult to administer in practice and so would not recommend it.

2.15. Another option could be to make a transfer to a SSAS a separate red flag. We recognise, however, that there are many legitimate SSASs and not all trustees / managers have discretion to make a non-statutory transfer. Therefore, this would prevent some members from transferring to their legitimate SSAS. Therefore, it may be more useful for transfers to a SSAS to be an amber flag providing there was a clear requirement for Moneyhelper to have a sufficiently robust script for members who have been referred to them for that amber flag.

Q4 Do you agree with this proposed approach, including the use of a non-exhaustive list of factors? If so, we would welcome your views on what those factors should be. We also welcome your input, including any evidence-based views, on its effectiveness and practical workability.

2.16. The SPP agrees that Condition 1 of the Regulations as it currently stands is too narrowly drawn, and requires trustees/managers to assess transfers under Condition 2 even where it is clear that there is no risk of a pension scam. It also does not reflect the practical reality where many trustees/managers (but by no means all) have adopted clean lists to enable them to process transfers in a cost-efficient way.

2.17. The proposed broadening of Condition 1 is therefore welcomed as it would be helpful to enable trustees/managers to proceed to make statutory transfers where they believe there is no fraud risk, and would reduce (together with some of the other proposed changes to the Regulations) the strain on MaPS from unnecessary guidance appointments.

2.18. The SPP's understanding is that the proposed extension of Condition 1:

- is intended to help those trustees/managers who want to give stronger legal footing to their clean lists, to streamline the process and allow transfers where they are confident there is no scam risk;

- is not intended to require due diligence in relation to whether a receiving scheme is "reputable" if, for example, a receiving scheme is not known to a transferring scheme or the scheme is not on the transferring scheme's clean list (and indeed Regulation 7(5) states that trustees and scheme managers cannot require a member to provide evidence or information to assist with due diligence). In these circumstances, the trustees/managers would be expected to default to undertaking the Condition 2 checks instead;

- is not intended to be mandatory, and that trustees and scheme managers can choose to apply the Condition 2 checks wherever they deem fit.

2.19. Our response to this question has been structured accordingly.

2.20. Factors supporting the decision on whether a pension scheme is “reputable”

2.21. The concept of a “reputable” pension scheme is not one that currently exists in pensions legislation. It is therefore important that any non-exhaustive list of factors included in the updated Regulations supports trustees and scheme managers in determining whether a receiving scheme is reputable. Although it should be recognised that given the challenge in securing updates to Regulations, it may be more appropriate for such factors to be captured within guidance.

2.22. In the SPP’s view, the factors should be captured at a high level within the Regulations themselves and be supported by guidance from the Pensions Regulator. This would allow the regulatory approach to develop in a flexible way (for example, as pension scam threats change in future years) without needing amendments to be made to the Regulations themselves. We suggest the Regulations specifically reference the corresponding guidance to give trustees and scheme managers a clear signpost. The alternative option would be to set out the factors in statutory guidance, which trustees/managers must have regard to.

2.23. Key factors (not currently included within the DWP’s consultation) which will be relevant to transferring trustees include:

- **the identity and regulated status of the sponsor or operator of the receiving scheme**. In practice, it is likely to be the fact that a receiving scheme is sponsored by a “household name” (for example, a listed company or an insurer) that will constitute a scheme’s “reputation”, and transferring trustees should be able to properly take that into account

- **the identity of other parties involved in the scheme**. For example, the ongoing involvement of reputable or disreputable third-party administrators, providers or advisers may be relevant to the assessment even where the receiving scheme is FCA regulated;

- **the length of time a scheme has been operating**. Where a pension scheme has been operating for many years, that will contribute to its reputation within the pensions industry.

2.24. In terms of commentary on the factors included in the DWP’s consultation:

- **the existence of an existing relationship with the receiving scheme**. This is helpful as it would allow those schemes which have compiled and used clean lists already (and have done due diligence on the receiving scheme) to leverage that work once the extension of the First Condition comes into force;

- **the nature and risk profile of the scheme’s investments / the level of transparency around fees and charges**. These factors present some level of overlap with the amber flag assessment at existing Regulation 9(5). We would also note that trustees of occupational pension schemes currently struggle to address questions around the transparency over fees and charges as there are no published benchmarks to guide them. The inclusion of this factor may not be overly helpful, therefore. That said, on balance it is helpful to permit previous work on assessing amber flags to inform whether a scheme is “reputable”

- **prior warning flags**. It is not clear what the term “prior warning flags” is intended to achieve. It is worth noting that occasionally an issue may arise during due diligence which is initially seen as a warning flag but is subsequently resolved to be satisfactory with further information and checks. It could be argued that it may be helpful to link whether a scheme is reputable to whether any previous due diligence carried out on that scheme (for example, as part of a current clean list) has identified concerns, to allow a new “reputable scheme list” to build as much as possible on existing clean lists. It would also be helpful if the guidance could give some examples of situations where there may have been prior warning flags which have since been found to not actually be of concern;

- **regulatory concerns**. This is a key relevant factor and could be extended to include concerns around not just the scheme but also the sponsor or operator of the scheme or connected parties (for example, advisers).There would naturally need to be some form of time limitation to ensure historic resolved concerns do not prove an unnecessary impediment.

2.25. Subjective nature of the decision

2.26. The proposed drafting of Regulation 6(1)(b) proposes that trustees satisfy themselves as to the decision on whether a scheme is reputable "on the balance of probabilities".

2.27. The proposed use of the words "satisfy themselves" builds on the current drafting of the First Condition, where trustees must check whether a receiving scheme is a certain type of authorised scheme.

2.28. Since the concept of whether a scheme is "reputable" is by definition a subjective one, the SPP believes that it would be better if the "gateway" to this decision is subjective.

2.29. The decision as to whether a receiving scheme is (or is not) an authorised master trust is an objective question of fact, but different trustees may reach different views on whether a receiving scheme is "reputable". The drafting of the Regulations should acknowledge that to avoid trustees being held to too an objective standard where instead it is their opinion and judgment that is relevant.

2.30. We also consider it would be helpful if the guidance could include a reminder that the purpose of the Regulations is to help prevent transfers to scam arrangements, and make it clear that trustees are not being asked to consider whether the receiving scheme or the decision to transfer is appropriate for the member. In that regard, it may be helpful for the guidance to make it clear that the outcome of any Value for Money (VfM) assessment (whether under the VfM framework or otherwise) is not something that needs to be considered as part of the 'reputable assessment'.

2.31. Optionality over the use of an extended First Condition

2.32. In the SPP's view, the drafting of the Regulations should make clear that the decision as to whether to include a "reputable" scheme within the First Condition is optional for transferring trustees/managers. This is not currently clear within the proposed amendments. It would also be helpful for the optionality point to be confirmed within accompanying TPR guidance, so that there is clarity for members and receiving schemes and transferring schemes cannot be challenged or criticised where they do not operate a "reputable scheme" list.

2.33. This is because some schemes (or administrators) may not wish to operate a "reputable schemes" list (akin to a clean list), for example where they are small and do not have the breadth and depth of experience to maintain such a list. These schemes should be permitted to stream transfers through the Second Condition checks.

2.34. Furthermore, transferring schemes may be challenged by members as to a decision about whether a scheme is or is not "reputable", and the simplest way to avoid such a challenge would be if trustees could decide not to assess a scheme at all and require the receiving scheme to fall under the Second Condition assessment.

2.35. The SPP therefore suggests that the following amendments could be made to the Regulations to make it clear that the decision on whether to assess a transfer as being to a "reputable scheme" is optional. Suggested amendments are shown in red and strikethrough below.

2.36. Amend Regulation 6(1) as follows:

"(1) In order for the trustees or managers of the transferring scheme to decide that the First Condition is satisfied, they must satisfy themselves—

(a) beyond reasonable doubt either that the receiving scheme is established, or listed as authorised, as set out in regulation 7(4)(a) or (b); or

(b) if they have decided that they will apply sub-paragraph 7(3)(d) when processing requests to make a transfer to the receiving scheme, on the balance of probabilities that the receiving scheme is a reputable scheme as set out in regulation 7(4)(c)."

2.37. Amend Regulation 7(2) as follows:

"*The First Condition applies to a transfer to a receiving scheme that is one of the types of scheme specified in ~~paragraph (3)~~ sub-paragraphs (3)(a)-(c) and, if the trustees or managers so decide in relation to the relevant transfer, to the type of scheme specified in paragraph (3)(d).*"

2.38. Amend the first line of Regulation 7(4) as follows:

"*If the First Condition applies, it is satisfied where…*"

2.39. Application of "reputable" to schemes with SSAS and QROPS status

2.40. The term "reputable" is defined in the Cambridge Dictionary as "*having a good reputation and able to be trusted*".

2.41. By definition, a SSAS must have fewer than 12 members, and so it is very unlikely that such a small scheme would "have a good reputation" amongst a transferring scheme, given that a SSAS will not typically have a public profile.

2.42. Given the concerns raised in the consultation by the DWP more generally around SSASs, the SPP suggests that the DWP considers whether SSASs should fall outside the scope of "reputable" schemes entirely.

2.43. Similar considerations may arise in relation to some QROPS. However, unlike SSASs, there may be circumstances in which a QROPS has an established reputation with UK transferring schemes, for example where it is used by a multinational employer as part of a long-standing international pension arrangement. The SPP therefore considers that any concerns relating to QROPS may be better addressed through the design of the qualifying criteria, rather than by excluding QROPS from the scope of "reputable" schemes altogether.

2.44. Alternative proposed wording

2.45. While we consider that the proposed amendment to Condition 1 is workable (subject to our comments above), we recognise that the use of the term "reputable scheme" has raised concerns amongst many in the industry There has been debate as to whether "acceptable" or "legitimate" would be better alternatives but again neither has secured uniform support.

2.46. The SPP, with support from other industry bodies, wrote to the DWP on 16 February 2023 setting out changes that it proposed should be made to the Regulations, which included adding a further category of scheme into the First Condition. We have set out below the proposed wording that we suggested be inserted into regulation 7, in case this is helpful to DWP if it decides to look at alternative wording:

2.47. "*7(3)(d) a pension scheme that the trustees or managers of the transferring scheme decide [they have reason to believe] / [on the balance of probabilities] will not be used to facilitate a pension scam*."

2.48. We proposed a definition for "pension scam" in the letter, but also acknowledged that it may be better to leave the term undefined and, instead, have a list of factors in Pensions Regulator guidance that should be taken into account when determining whether a scheme will not be used to facilitate a scam. On reflection, we consider the better approach would be to leave the term undefined and have a list of non-exhaustive factors in guidance as this allows flexibility to address scam tactics as they evolve.

2.49. Ancillary amendments that would need to be made as a result of our proposed change to regulation 7 were also set out in the letter.

Q5 Do you foresee any issues in the practical implementation of the amended regulations?

2.50. The SPP understands and agrees with the logic behind the proposal that if a member has already completed a MoneyHelper/Pensions Safeguarding Guidance session, they should not ordinarily need to undertake a further session for a subsequent transfer request made within the following 12 months. The aim is clearly to reduce repeated guidance appointments, lessen administrative burdens and avoid unnecessary transfer delays.

2.51. However, we have some concerns regarding the breadth of the proposed exemption.

2.52. Draft regulation 2(5)(b) would insert new regulation 9(1A):

2.53. *"A member may not be required to take the specified guidance where the member provides the specified evidence confirming that they have taken the specified guidance within the period of 12 months ending with the date the trustees or managers of the transferring scheme received the request."*

2.54. Under the proposed rule, guidance received in relation to one transfer could satisfy the requirement for all subsequent transfer requests made within the following 12 months, even though:

- the proposed receiving scheme is different;
- the investment proposition is different
- the pressure tactics are different; and
- the member's attitude and circumstances may have changed over time.

2.55. In effect, the guidance requirement is being treated as a one-off educational intervention with a 12-month shelf life. However, scam activity is often iterative and persistent. Many victims reject earlier approaches before eventually accepting a later one. The fact that a member received appropriate guidance several months previously does not necessarily mean that they are adequately protected against a different scam risk arising from a subsequent transfer request.

2.56. The SPP therefore believes that the exemption may benefit from additional safeguards.

2.57. One option would be to limit the exemption to cases where the member is seeking to transfer to the same receiving scheme as that considered during the earlier guidance session. This could be achieved by amending the draft regulation along the following lines:

2.58. *"(1A) A member may not be required to take the specified guidance where the member provides the specified evidence confirming that they have taken the specified guidance* ***in respect of a request to make a transfer to the same receiving scheme*** *within the period of 12 months ending with the date the trustees or managers of the transferring scheme received the request."*

2.59. However, the SPP recognises that this approach may present practical difficulties. Under the current process, trustees and administrators receive confirmation that a member has attended a MoneyHelper/Pensions Safeguarding Guidance appointment together with information enabling them to verify when that appointment took place. They do not receive information about the receiving scheme, the circumstances of the proposed transfer or the issues discussed during the guidance session. Consequently, they would have no practical means of verifying whether a previous guidance session related to the same proposed transfer.

2.60. The SPP therefore encourages the DWP to consider, together with MaPS, whether this assessment could instead be undertaken by MaPS as part of its existing guidance process. For example, where a member seeks guidance within 12 months of a previous appointment, MaPS could establish whether the request relates to the same proposed transfer and, where appropriate, issue the usual confirmation to the transferring scheme without requiring the member to complete a further full guidance session.

2.61. Alternatively, if the policy intention is that trustees and managers should determine whether the exemption applies, consideration should be given to enhancing the confirmation provided by MaPS so that it includes sufficient information to enable that assessment to be made. For example, the confirmation could identify the proposed receiving scheme and, if considered appropriate, the relevant scam indicators or amber flags that prompted the guidance requirement.

2.62. The SPP considers that either of these approaches would achieve the policy objective of reducing unnecessary repeat guidance appointments whilst ensuring that the exemption can be applied consistently and effectively in practice.

2.63. Separately, the SPP notes that the draft regulations leave the operation of the incentives red flag unchanged. Whilst we recognise that the DWP considered whether amendments were required, industry experience continues to demonstrate that the subjective nature of what constitutes an "incentive" gives rise to inconsistent interpretation and application.

2.64. The practical difficulties associated with this red flag were recognised following implementation of the 2021 transfer conditions, with both the DWP and TPR issuing a joint statement and TPR subsequently amending its guidance to assist schemes in applying the legislation. Whilst that additional guidance has been helpful, the underlying legislative test remains difficult to apply consistently.

2.65. The SPP therefore considers that further clarification of the incentives condition would reduce the risk of inconsistent decision-making, disputes and complaints. In particular, consideration could be given to more clearly making the distinction between exceptional or unusual incentives that may indicate scam activity and incentives that are now commonplace or represent normal commercial practice within the pensions industry.

Q6 Do you foresee any issues with the proposed wording of the amendments to the regulations, as detailed in Annex A?

2.66. New regulation 9(1A) refers to the date on which the trustees or managers "*received the request*". We assume this is intended to refer to the member's "*request to make a transfer*" as defined in regulation 2(3) of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. However, that defined term has not been used. While the intended meaning may be apparent from the wider context, using the existing defined term could provide greater certainty and avoid any potential ambiguity.

2.67. Additionally, calculating the look-back window from the application date can create sequencing anomalies. For example, if a member attends a guidance appointment for a separate transfer in the period between submitting their application and the trustees determining an appointment is required for this scheme, they would seemingly not be exempt under the current draft. It would be more practical if the 12-month exemption period looked back from the specific date on which the trustees reach the decision that a guidance appointment is actually required.

2.68. Secondly, draft regulation 2(5)(d) provides: "*in paragraph (5) omit sub-paragraph (d);*"

2.69. This removes the current amber flag in regulation 9(5)(d), namely: "*there are any overseas investments included in the receiving scheme; or*"

2.70. We understand that, as a matter of legislative drafting, omission of sub-paragraph (d) should not affect the operation of the remaining list. However, we would welcome confirmation that the deletion of sub-paragraph (d), which currently ends with "*or*", does not inadvertently create any uncertainty as to whether the remaining sub-paragraphs continue to operate as alternative conditions rather than cumulative conditions.

3. About The Society of Pension Professionals

3.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.

3.2. The breadth of our members is a unique strength for the SPP. Our membership of 90 corporate organisations employs over 20,000 pension professionals including actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists.

4. Further information

4.1. For more information about this consultation response please contact SPP Director of Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.

4.2. To find out more about the SPP please visit the SPP web site: https://the-spp.co.uk/

4.3. Connect with us on LinkedIn at: https://www.linkedin.com/company/the-society-of-pension-professionals/

16 July 2026