



Response by TISA to Pension scams: empowering trustees and protecting members

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by focusing the convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry**. We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **MiFID II, CASS, ESG/RSI, operational resilience, Cyber Risk, SM&CR** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings & Investment**. This reflects TISA's commitment to open standards and independent governance.

Executive Summary

TISA welcomes the opportunity to respond to the DWP consultation - Pension scams: empowering trustees and protecting members.

Scammers are a scourge on society, and we fully support proposals which are designed to reduce activity of this nature. We broadly support these proposals, and it is important that the statutory right to transfer can be restricted in certain scenarios. This is the overarching issue that providers have had to deal with when scam activity is suspected or known during the pension transfer process. Despite acting in the members' best interests, any delay in the process is often viewed negatively, to the extent that firms can even be reported and fined.

Industry and government are working collaboratively on tackling this significant challenge, and firms place a high priority on their due diligence processes to ensure that any likely criminal activity can be identified before transfer proceeds are released. Indeed, the proposed process for transfers falling into 'The Fourth Condition' places a reliance on firms to use discretion on whether a transfer can proceed with or without further intervention.

Given the robust processes in place, we do not believe there is evidence to support the need for 'The First Condition,' which effectively segregates schemes into those which are 'safe' and those that are 'not necessarily safe.' The perception and potential delays that this may create could impact on the flow of New Business into schemes types not included in 'The First Condition.' A blanket approach for certain scheme types could also potentially result in more scams taking place, as schemes have no discretion to do anything other than process the transfer without intervention for schemes falling into 'The First Condition,' even if they have suspicions. This compromises the prime objective for the consultation, and we propose this condition is removed and the strong, reliable and constantly reviewed due diligence processes in place continue to be the basis for determinations at this stage.

Whilst prescription can provide certainty for schemes in ensuring requirements are appropriately met, it can be equally beneficial to scammers, who can prepare high quality evidence and a variety of comprehensive standard question responses to meet the requirements set out in the proposals. Where evidence or further information is requested, we suggest that this is treated as industry guidance, whilst allowing providers the discretion to ask for additional detail as appropriate. The flexibility will enable the process to cater for all scenarios as currently, the proposals do not cover more unusual scenarios e.g. earnings evidence for individuals wanting to consolidate into an old deferred pension scheme.

The consultation comes at a time when there are several others also pending and some of the proposals overlap such as the process for MaPS referral. It would be useful to understand how these situations are managed between the regulators when creating draft proposals.

We would welcome the opportunity to discuss any aspects of our response with you.

Question responses

First condition

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.

Whilst there are other characteristics which could be used to include schemes within this list such as those used for Auto Enrolment, schemes over a certain size and schemes listed on a recognised UK stock exchange, none of these relate to additional scheme types specifically and would add additional complications to the transfer process.

The objective of these proposals are to reduce the likelihood of pension scams from occurring within the pension wrapper as a result of a transfer, whilst enabling genuine transfers to proceed with little or no further intervention. Introducing 'The First Condition' removes the opportunity for a ceding scheme to apply due diligence on these transfers, and in the unlikely event that scam activity is suspected, cannot alert the member to this suspicion. In our view, the condition could fail the main objective.

If we consider the issues that schemes face today in relation to transfers and associated scams, it is the inability to restrict a transfer in those instances where scam activity is either suspected or even known. Schemes typically have very robust due diligence processes in place, which enables the identification of scam activity. Recognising the evolving nature of scams, industry also collaborates well to maintain these processes which can be evidenced with the PSIG Code of Practice and the PSIF forum. Furthermore, the proposals recognise this strong due diligence by placing a reliance on firms' processes for transfers falling into 'The Fourth Condition.'

Taking the above into account, we strongly believe there is no need for 'The First Condition.' The robust processes and industry collaboration in place, combined with the other conditions proposed provide an effective framework to combat scam activity which occurs within the transfer process.

Should 'The First Proposal' feature in future legislation, there is a danger that it segregates schemes into those perceived 'safe' and those perceived 'less safe or unsafe.' This perception combined with the possible likelihood of an extension to the transfer journey, might influence individuals and advisers' decisions on receiving scheme destinations. Schemes themselves could adopt a cautious approach with the issuing of standard questions, despite schemes still being able to transfer to schemes they consider safe without issuing a member questionnaire and 'reasonable belief' being the actual basis for determining whether most warning flags exist. It should be made clear that the due diligence process should not change as a result of the implementation of these proposals i.e. if a scheme which falls into 'The Fourth Condition' is considered 'safe' pre implementation, it should remain so post implementation.

There is some inconsistency in the wording relating to the description of schemes eligible for 'The First Condition.' The final bullet of Paragraph 31 states '**Personal Pension providers, authorised and regulated by the FCA, that are an insurer authorised by the Prudential Regulatory Authority, or within the same corporate group as such an insurer.**' However, draft regulation 3 describes this as '**a pension scheme operated by an insurer that is registered and authorised by the Financial Conduct Authority, and authorised by the Prudential Regulatory Authority, where "operated by" includes where the pension scheme is a subsidiary undertaking of a parent undertaking that is such an insurer, within the meanings given by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006.**'

We are aware of member firms where the SIPP and insurance entities are both subsidiary undertakings of the same parent undertaking. These firms would not meet the description contained in draft regulation 3 and we would therefore suggest that this is amended to ensure it does not exclude those firms it is intended to include.

Regulation 10 states that the transferring scheme must provide the member with details about the conditions for transfer, and the requirement for at least one condition to be satisfied within one month of the earlier of a CETV or transfer request. Most transfers are likely to proceed within short timescales with the receiving scheme often initially contacted to commence the process. In these instances, it would mean that in order to retain existing automation and transfer processes, the member would receive these details after the transfer had completed. Clearly this would cause confusion and is not a good consumer outcome. We would suggest that discretion is allowed by the ceding scheme on when to send this information to the member, typically seeming appropriate when the transfer is not 'straightforward' and a member communication is required or the transfer timescale is likely to exceed one month.

Second and third conditions

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?

Whilst the details set out in the draft regulations provide an appropriate measure to evidence the employment link in most instances, the prescribed nature could result in some transfers 'falling through the gap' such as wanting to consolidate into an old employer scheme. Scammers are also extremely resourceful and sophisticated and are capable of producing documentation which would satisfy fairly stringent checks. A prescribed list provides a confirmed suite of documentation that scammers would need to produce and this could therefore, whilst good intentioned, actually help scammers. The list itself provides an excellent indication of the type of documentation that could help support an employment link, and we would suggest this is issued as statutory industry guidance, which would enable schemes to request other appropriate evidence on a case-by-case basis.

The wording for draft regulation 5 (2) is currently positioned in a way which would mean that ceding schemes would potentially be relying on the due diligence that another provider has undertaken. If it transpires over time that the due diligence relied on was sub-standard, this means that other firms could be potentially liable for complying with legislation.

Clearly firms would not be comfortable allowing a transfer to proceed in this scenario and the requirement needs to be changed. We suggest that the regulation is reworded so that the evidence requirement is met when a transfer has taken place to the same scheme destination scheme within the last 12 months (since the implementation of these proposals) and from the same ceding scheme. This would mean that firms would be relying on their own previous due diligence which removes the uncertainty from the process and also removes the need for the member to provide confirmation of the transfer.

Finally, despite best endeavours, it should be recognised that schemes are accepting this evidence in good faith and are reliant on the honest and integrity of the other parties involved in the transfer process.

Q3. How could the evidence requirement for ‘residency link’ work in practice?

The residency link is complicated and statutory industry guidance is required which should apply at country level, as opposed to jurisdiction. An example of this being that certain aspects of European financial laws and directives apply to all EU member states. Would the residency link therefore be met if the member resides in a different EU member state to the one in which the QROPS operates, given that both would be subject to common legislation?

Our comment and suggestion, relating to the reliance on other schemes due diligence for transfers to the same scheme occurring within 12 months also applies here - draft regulation 7 (2).

Fourth condition

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

We agree with the red flags which have been identified. The FCA currently operate a warning list to help in the identification of scam activity. The inclusion of a destination scheme on this list is a potential additional red flag which requires consideration.

There may be circumstances where further industry guidance is required to help schemes with these identifications. An example is where the member has been pressured to make the transfer quickly. Whilst one-month has been identified as ‘quickly’, there are other factors which could influence this – e.g. when a transfer is taking place close to tax year end and a contribution is reliant on its completion.

Some members have raised concerns that a refusal to pay a transfer under a red flag situation could lead to formal complaints (despite the refusal being in members’ interests) if the scheme has a discretionary power to pay non-statutory transfers. This could be relevant in the context of Regulation 11 which states that there is no override to the scheme’s provisions to the extent that there is a conflict. It would be appreciated if some further clarity around this could be given in order to provide some assurances to those schemes impacted.

It would also be prudent for any members involved with a transfer involving a red flag to be referred to MaPS for scams guidance. Whilst this would have no impact on the transfer proceeding, it may benefit the member and reduce the likelihood of them falling for a scam in the future and may help the member understand why the transfer has been blocked. This information could be included in the communication confirming the transfer will not proceed.

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

It is essential that further industry guidance is provided, as the decisions that need to be made based on the information provided by the member are crucial. Whilst the guidance already provided is of benefit, these decisions will be based on the knowledge that the ceding schemes have and is likely to lead to differences in approach. If further guidance can create a best practice approach, this will support good decision making. It will also help avoid potential FOS complaints in future years.

It is also worth raising that the receiving scheme will be best placed to make some of these decisions, although we acknowledge that where scam activity is taking place, taking this approach would benefit the scammers and does not meet the overarching objective. More generally however, schemes should be responsible for the investments they permit.

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?

The involvement of a regulated adviser should be considered in the due diligence process and in most cases, would be a positive factor when determining if a transfer can proceed or whether further information is required.

Consultation CP21/11 is currently ongoing, and this proposes that for transfers where the member is aged 50 or over, the ceding scheme is required to provide the stronger nudge to guidance and offer to book the appointment when this is taken up. We would ask how that interacts with this consultation e.g. Where it is determined that MaPS scams guidance is required for a member aged 50 or over, would the ceding scheme need to book MaPS appointments for scams guidance and for retirement guidance?

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?

Whilst the questions themselves help schemes identify the presence of red or amber flags, a prescribed set of questions will enable scammers to produce in advance, a comprehensive set of responses.

Schemes do have the opportunity to ask for more information as appropriate, however having a standard set of questions to meet the requirement may result in only these being asked for many transfers.

It does not appear from the draft regulations that the standard questions have to be used and the scheme has discretion to request appropriate information from the member to determine the presence of any flags. We would agree that the questions themselves provide excellent guidance for schemes but are not mandated.

We do of course acknowledge that the information requested must enable schemes to identify the presence of the prescribed set of red and amber flags, however the ability to ask these in a non-prescribed way will help combat scammers in preparing comprehensive answers in advance.