TISA

Response by TISA to:
Protecting Pension Savers - Proposals to Amend the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

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About TISA

Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have approximately 270-member firms involved in the supply and distribution of savings and investment products and associated services. Our members include the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, FinTechs, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

Our work, your influence

With a focus on four key workstreams that best support the consumer and UK financial services, TISA has become a leading industry voice and ally for delivering consumer focused initiatives.

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **three distinct workstreams**:

1. **Consumer Protection**
   Protecting the best interests of UK consumers in their financial journeys.

2. **Consumer Access**
   Considering issues that could directly impact access to financial products.

3. **Effective Products**
   Examining key considerations and legislation relating to products across the investing and saving landscape.

All groups focus on both strategic and technical elements of policy/regulation. Key outputs from our workstreams can include recommendations to government and regulators on developing a financial services framework that protects and benefits UK consumers, finding solutions to operational/infrastructure challenges and developing standards of good practice on the interpretation and implementation of new regulation.

We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out **more about TISA here:** https://www.tisa.uk.com/about-tisa/

Executive Summary

TISA welcomes the opportunity to respond to Protecting Pension Savers - Proposals to Amend the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

Whilst the original regulations were laudable in their ambition and applied additional protections for scheme members, it became clear that changes needed to be made as they were not being applied consistently and in some cases, unintended delays were being created for what many would consider a straightforward transfer.

The proposed amendments largely remove many of the issues that have emerged over recent years. We believe that whilst this direction of travel is very welcome, some further enhancements could be made to make the framework more robust and reduce opportunities for sludge practices and inconsistency in interpretation.

Strong guidance referred to in legislation will be required to ensure all schemes are clear on what constitutes a 'reputable' scheme. The intention here is of course to stop scams and therefore, if a scheme is known to be genuine, it should meet the requirement for Condition 1. It is not the role for ceding schemes to judge other aspects of receiving schemes propositions – that is the regulators' job.

Consideration needs to be given to the use of the word 'reputable.' If a ceding scheme does not deem a receiving scheme to meet this definition, then the scheme becomes 'disreputable' by default. At a time when public mistrust in the pensions system is high, the wording may add to that perception and have a commercial impact.

In summary, we are very supportive of these proposals subject to some small tweaks and believe this is an important step to take, as we continue to collectively consider changes to the transfers framework, to ensure it is fit for purpose in a quickly evolving DC landscape.

With regards to the SSAS proposals, we do not believe these are appropriate or representative of the current SSAS market. This is well established and as such, sees many such schemes continue to legitimately operate without an employer link. The reduced regulatory requirements for operating SSAS does mean these need to be treated with more caution and we believe they would benefit for greater regulatory oversight going forward. Aside from raising administration standards and reducing inadvertent compliance breaches, it would also help reduce the likelihood of new schemes being used for scam purposes.

We look forward to continued engagement with you.

Question responses

Question 1

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

We do not believe the wording currently meets the objectives. It is too broad and needs to be made specific to SSAS.

Members of these schemes will typically be Directors and business owners. As such benefits may not follow normal employee patterns such as earnings subject to PAYE. Instead, other options such as dividends are used to take advantage of the associated tax benefits.

These schemes are also not used for Auto Enrolment purposes and as such, may not be receiving regular contributions from its members.

If the proposed red flag is to remain in place, wording updates will be necessary to take into consideration the above

We also believe that if all the evidence required by 10(1) is supplied, this would demonstrate an employment link. As the proposed regulations allows schemes to determine a link has still not been proven despite complying with all of these requirements, we would ask if you could provide some examples of scenarios where this situation could arise.

Question 2

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?

SSAS are generally regarded as a scheme type which is potentially higher risk than others and are more likely to be involved in scam-related activities than other pension products. A typical scenario being where a commercial property investment company is established with the promise of those transferring pension benefits in becoming company directors with associated attractive benefits.

The SSAS market is split, with many genuine older SSAS remaining in place (with or without an employer attached). However, the incentives to establish new schemes are narrow in scope – the loan-back facility being the only real differentiator between these and SIPPs. As such, transactions involving newer SSAS are often treated by other schemes with a higher degree of caution.

Question 3

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

No, we do not believe this to be an appropriate and effective measure, as there are a significant number of existing and genuine SSAS running where the employment link no longer exists.

At the point of establishment, a SSAS is created with a sponsoring employer. However, over time, it is entirely normal for the sponsoring company to be dissolved, cease trading, or be sold. In such circumstances, the scheme may, under its governing rules, become an "orphaned" scheme automatically, or the trustees may execute a deed to remove the employer formally.

This transition does not signal a shift towards fraudulent intent. Rather, it often reflects a natural stage in the lifecycle of a business and its directors, particularly as they approach retirement. Where there is no suitable successor (such as a family member or partner) to continue the business, directors must consider alternative exit strategies, and the removal of the employer from the SSAS is simply a consequence of this process.

Importantly, in a well-governed SSAS, the removal of the employer does not materially affect the integrity or operation of the scheme. Member trustees frequently continue to manage their investments responsibly, and it is common for them to consolidate other pension arrangements into the SSAS. This reflects the flexibility offered by SSASs under pension freedoms, as well as trustees' familiarity with investment control developed during the period when the employer was active.

Historically, SSASs were required to appoint a "Pensioneer Trustee," whose role was to ensure regulatory compliance and that member trustees understood and fulfilled their fiduciary duties. Following the removal of this requirement in 2006, many providers continued to offer a "Professional Trustee" service, which, in practice, fulfilled a similar governance and oversight function.

However, the transition to making the professional trustee role optional has, unfortunately, created opportunities for misuse. In some cases, SSAS structures have been exploited by "bad actors," including using shell companies and nominal directorships with minimal commercial substance, enabling schemes to be registered with HMRC. Such arrangements have then been used to receive pension transfers and subsequently facilitate misappropriation of funds, unsuitable investments, or unauthorised early access.

Whilst members also have a trustee responsibility, there is anecdotal evidence that indicates the detailed knowledge required to responsibly run these schemes is often lacking and schemes can and have put themselves into precarious and non-compliant positions due to this reason.

It is reasonable to conclude that the mandated presence of a reputable Professional Trustee would substantially mitigate such risks. Most established SSAS providers act as both trustee and PSA with robust due diligence processes to verify the legitimacy of both the sponsoring employer and the member trustees' connection to it.

Additionally, it is odd that SSAS, which are subject to a higher likelihood of scams and administrative incompetence have less regulation attached to them than other pension products. Consideration should be given not only to the mandated reintroduction of a pensioneer trustee but also to having them subject to a more robust regulatory framework, which is more in keeping with the UK pensions system more generally.

Question 4

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.

We agree that the list needs to be non-exhaustive. Having a definitive list means it becomes a tick box exercise which could support scam activity and could result in genuine schemes being excluded from meeting Condition 1.

However, 'reputable' is a subjective word and will be interpreted differently by schemes. Guidance must be provided to support schemes in making this determination on a consistent basis and this guidance should be referred to in the legislation. Scope for ambiguity needs to be removed with this guidance. Furthermore, it is important that the legislation and guidance place a firm emphasis on schemes which are known to be genuine meeting the 'reputable' threshold.

We need legislation to work in a way which removes 'sludge' practices which continue to operate in a small number of cases, whilst promoting a safe and streamlined transfer process. The legislation is there to specifically stop pension scams, so where a receiving scheme is known to be genuine, the rules should not work in a way which means transfers could still be blocked e.g. because they are offering an incentive (which is a red flag). Once a scheme has been established as 'reputable' i.e. genuine, the flags should no longer play a part in the transfer process and it should proceed through Condition 1.

The non-exhaustive list of factors should include whether the scheme is authorised under the regulatory regime in which it operates. We recommend an industry workshop is set up to discuss what this list could/should comprise.

Lastly, it needs to be borne in mind that schemes meeting the 'reputable' threshold will only apply to the point in time at which the determination is made. Future events may result in some schemes losing that status and consideration needs to be given to how schemes which have previously made transfers to those schemes are protected.

Question 5

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

There will be an interim period where final rules have been agreed but not yet implemented into regulation. Schemes will need to be provided with guidance on how to process transfers during this time, as we could be in a situation where a statutory transfer would incur a flag on one day but could proceed through Condition 1 on the next.

Question 6

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

Please see our response to Question 1 which recommends wording changes to enable the proposals to meet their objectives.