PSIG
PENSION SCAMS INDUSTRY GROUP

COMBATING PENSION SCAMS:

A Code of Best Practice

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Disclaimer:
The Code is for guidance only and does not purport to constitute legal advice. The Code is not exhaustive and nothing in the Code can be relied upon as evidence of compliance with any other legal or regulatory requirement. The Code relates to circumstances prevailing at the date of its publication and may not have been updated to reflect subsequent developments.

Following the Code does not relieve a party of its legal or regulatory obligations and following the Code might not prevent a claim being brought against a party.

April 2021

COMBATING PENSION SCAMS:

Framework Document

01

FOREWORD BY THE MINISTER FOR PENSIONS AND FINANCIAL INCLUSION

The Government is fully committed to protecting people from pension scams, pursuing those who perpetrate pension scams and bringing them to justice. That is why, with the support of the Pensions Scams Industry Group, I have introduced measures in the Pension Schemes Act 2021 to put trustees in the driving seat when it comes to pension transfers. These new measures will enable trustees to prevent a transfer request if they see evidence of 'red flags'. They will also, for other potentially fraudulent transfers, prevent people's hard-earned savings being moved to suspect schemes without them receiving expert guidance. This builds on the ban on pensions cold calling and tougher rules to stop scammers opening fraudulent pension schemes government has already introduced.

To get real coverage and supply of data from industry PSIG need to increase the number of organisations providing data, which can then feed into Project Bloom, the cross government taskforce established to bring together law enforcement, government and industry to share intelligence, raise awareness of scams through communication campaigns, and take enforcement action where appropriate. To aid this flow of information, I have compelled schemes to share information in order to get on top of the changing methods scammers are using. The Pensions Regulator have also launched their 'Pledge to combat pension scams' urging pension providers to do what they can to protect scheme members and follow the principles of this Code of Good Practice.

It is essential that people remain vigilant to pension scams. ScamSmart, our joint awareness campaign, in conjunction with the Pensions Regulator and Financial Conduct Authority, plays an important part in getting out this message. ScamSmart has reached four out of five pension savers in the target group of 45 to 64 year olds and 77% say they recognise the messages there.

Individuals need access to the right information in order to make informed decisions. The Pensions Advisory Service, Pension Wise, both delivered by the Money and Pensions Service provide this important service.

I welcome this timely update to the voluntary Code, thank PSIG for their continued support in this arena and urge industry to follow these principles.

Guy Opperman MP

Parliamentary Under-Secretary of State at the Department for Work and Pensions

1st April 2021

02 INTRODUCTION

Pension scams damage individuals, pension schemes, pension providers and society. Once taken in by tempting offers, pension scheme members can be persuaded to transfer or invest their retirement savings to dubious or high risk, unregulated investment structures, many of which are based overseas.

Pension scams rely on deception, misleading people about risks, returns and taxation. Offers seem attractive and plausible. Scammers spread misinformation about the motives of those who try to explain the risks of such transfers. Layers of fees or commissions can be deducted from the funds and tax penalties can be applied leaving these individuals with substantially reduced retirement benefits. In some cases, the pension funds are simply stolen. Please refer to the Technical Guide for more detailed information.

As the member may have a statutory transfer right, it is the trustees and providers who must determine whether the receiving scheme is one to which they are lawfully able to transfer. They have a duty to act in the interests of all scheme members, including those requesting a transfer. Trustees should perform reasonable, appropriate and proportionate due diligence, without unnecessarily blocking or delaying a valid transfer. Daily judgments must be made, balancing conflicting legal rights and risks.

In 2015, the Pensions Scams Industry Group (PSIG) developed a voluntary Code of Good Practice, written by a group of key stakeholders, including trustees, administrators, legal advisers and insurers. This Code set out suggested steps to help identify whether requested transfers should be paid.

This update (2.2) reflects recent regulatory and legislative changes as well as the evolving nature of pension scams. Other changes have been made to improve usability.

The Code primarily relates to combating pension scams, including investment scams within a pension. However, as many scams take place after savings have been legitimately withdrawn from pension schemes, this Code also encourages communication with scheme members before they transfer or withdraw cash or drawdown from their pension pots in order to raise awareness of unsafe investment schemes.

As part of the Pensions Regulator's efforts to prevent pension scamming, in November 2020 in partnership with PSIG, it launched its Combat Scams Pledge initiative[1]. Please refer to Section 7.6 of the Technical Guide for additional information. PSIG very much welcomes the Pensions Regulator's initiative and the opportunity for transferring schemes to formally pledge and evidence their commitment to this. The Code is fully aligned with the new pension scams module within the Trustee Toolkit and the separate training materials which have been developed to support the pledge.

The March 2021 (2.2) Code has again been reviewed by a wide group of industry bodies and organisations to ensure broad acceptance and encourage widespread adoption of its principles.

This Framework document forms part of the PSIG Code of Good Practice and details the context, structure and principles of the Code. The document should be read as part of the full Code of Good Practice and readers should refer to the other Code documents as required.

[1]https://www.thepensionsregulator.gov.uk/en/pension-scams/pledge-to-combat-pension-scams?msdynttrid=p5TEy22gFSNrjDckaYX4Ypbm557PZcqHTVzRWZ1Q7nQ

03 STATUS

The Code itself is not a statutory code, nor does it seek to override guidance issued by regulatory bodies. Rather, the Code of Good Practice is voluntary and seeks to set a best practice industry standard to help identify transfer requests that may be fraudulent or a scam.

The Code is intended to help those involved in the administration of registered pension schemes to assess members' transfer and cash withdrawal requests. The Pensions Regulator (TPR), and members, expects trustees and providers to carry out a reasonable level of due diligence and not aim to rely on the HMRC registration process alone. This voluntary Code represents good industry practice on due diligence.

04 PRINCIPLES

When reviewing a member transfer request pension scheme trustees and providers will want to ensure not only that they only make a valid transfer, but also that they help the member to identify and assess any warning flags. For example, there is no statutory right for a transfer to a pension scheme which is not an HMRC registered pension scheme or a QROPS.

"Pension scams" including "pension liberation", may involve fraud and theft. A range of scams have been developed which claim to exploit tax and legal loopholes and can offer members cash payments if they transfer from legitimate pension schemes. Reported scams include promising unrealistic rates of return. These will not necessarily be unlawful, but members are often taking more risk than they realise, potentially risking their entire pension savings.

Scheme members should protect themselves from scams, but they need help to do so. TPR, FCA and HMRC are clear that the pension industry should ensure scheme members are aware of the consequences of falling victim to scams, whether by transferring to a liberation vehicle or by making poor investment choices with their pension fund.

This can be distilled into three core principles:

1. Trustees, providers and administrators should raise awareness of pension scams for members and beneficiaries of their scheme.
2. Trustees, providers and administrators should have robust, proportionate and both regulatory and legislatively compliant processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk.
3. Trustees, providers and administrators should generally be aware of the known current strategies of the perpetrators of pension scams in order to inform the due diligence they need to undertake and should refer to the warning flags as indicated in The Pensions Regulator's Guidance, FCA alerts and by Action Fraud.

See the Technical Guide for further information on the core principles. →

05 COMMENCEMENT

The 2021 Code (2.2) takes effect from 1st April 2021 and is available for use in any transfer request processed on or after that date, even if the request for a transfer was received before 1st April 2021.

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UPDATES

The Code will be reviewed and updated periodically to ensure it reflects current risks and good practice. The current version can be found on the industry website:

www.combatingpensionscams.org.uk

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CONTENTS

The Code is divided into four further chapters

Practitioner Guide

- Detailing the robust and proportionate due diligence steps undertaken by trustees and administrators of pension schemes assessing the pension scam risk of a requested transfer.

Resource Pack

- Containing materials these practitioners can use to undertake the due diligence detailed in the Practitioner guide. This includes example scripts, letter and discharge form wording, Action Fraud reporting and case studies.

Technical Guide

- Detailing the rationale behind the guide. This includes legislative and regulatory requirements as well as the Combat Scams pledge initiative.

Summary of Changes

- Detailing the changes since the previous version of the Code (v2.1) which was issued in June 2019.

08 AUTHORS

I am grateful to the members of the Industry Group for giving their time to review the Code and to the individuals (marked with *) who formed the Group's Drafting Committee to update the Code.

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~ Shared representation on the Board.

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REVIEWERS

I am also grateful to the organisations shown below, who generously gave time to review the Code, or provided technical input to the Code. Any errors or omissions are, of course, the responsibility of the Code's authors.

The Pensions Regulator
Financial Conduct Authority
Department for Work & Pensions
Association of Member Nominated Trustees
Trades Union Congress
Union of Shop, Distributive and Allied Workers
Sovereign Group
Mercer
Burges Salmon
Sackers
The Society of Pension Professionals
Guernsey Association of Pension Providers
Guernsey Financial Services Commission

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COMBATING PENSION SCAMS:

A Practitioner Guide

01 INTRODUCTION

The Pensions Scams Industry Group (PSIG) Code of Good Practice, written by a group of key stakeholders, including trustees, administrators, legal advisers and insurers sets out suggested steps to help pension scheme trustees undertake due diligence on requested transfers.

The Code is not a statutory code, nor does it override legislation or guidance issued by Regulatory bodies. The Code of Good Practice is voluntary and seeks to set a best practice industry standard to help identify transfer requests that may be fraudulent or a scam. The Code is based on three guiding principles:

1. Trustees, providers and administrators (referred to simply as schemes for the remainder of the document) should raise awareness of pension scams for members and beneficiaries of their scheme.
2. Schemes should have robust, proportionate and both regulatory and legislatively compliant processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk.
3. Schemes should generally be aware of the known current strategies of the perpetrators of pension scams in order to inform the due diligence they need to undertake and should refer to the warning flags as indicated in The Pensions Regulator's Guidance, FCA alerts and by Action Fraud.

This Practitioner Guide forms part of the Pensions Scams Industry Group (PSIG) Code of Good Practice and details the key Due Diligence steps that a Pension Practitioner should undertake when assessing a pension transfer. The Practitioner Guide should be read as part of the full Code of Good Practice and Practitioners should refer to the Technical Guide and Resources Pack as required.

02 COMMUNICATING THE RISKS OF SCAMS TO MEMBERS

2.1 Raising awareness

You[1] should regularly warn members about the risk of scams by including scams materials in: annual benefits statements, on pre-retirement letters and in transfer packs.

The pension scams warning "Beware of pension scams. Falling foul of a scam could mean you lose some or all of your money" or similar messaging and a link to the ScamSmart website[2] should be included in these documents. Their inclusion in the pre-retirement letters helps members understand the risks of investment scams which target their retirement savings and, in particular, their lump sum once in their own hands.

In addition, your responses to any requests for information or transfers, should reference the Pensions Regulator's latest pension scams awareness material[3] and include the Pensions Regulator's scams warning member leaflet[4].

For all Defined Benefit (DB) scheme members who request a transfer (CETV) out quotation, you should provide them with a link to FCA information on considering a pension transfer from a defined benefit pension[5].

For all Defined Benefit (DB) scheme members who request a transfer, the new letter template[6] prepared jointly by the Pensions Regulator, the FCA and The Pensions Advisory Service (TPAS) following the Covid-19 pandemic, must be issued. The letter contains important information on points the members should consider before making a decision and where they should go for impartial guidance.

When responding to requests for information, you should ensure that you provide information only to those authorised to receive such information.

Pension scam information should also be included prominently on your website and on any customer mobile applications.

Where a member responds to say that they think they may be the victim of a pension scam, full evidence of the attempted scam should be captured, and reported to the appropriate authorities as outlined in Section 8.

[1]Please note that we refer to "you" in this document as the reader of the Practitioner Guide and as someone who has responsibility in your firm for undertaking due diligence on pension transfers.
[2]https://www.fca.org.uk/scamsmart
[3]https://www.thepensionsregulator.gov.uk/en/pension-scams
[4]https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/16423_pensions_consumer_leaflet_screen.ashx
[5]https://www.fca.org.uk/consumers/pension-transfer-defined-benefit
[6]https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/cetv-members-letter.ashx

2.2 Lump Sum & Income Drawdown Requests

You should encourage members asking for a lump sum or income drawdown to contact The Pensions Advisory Service for free and impartial guidance either online or via their dedicated helpline. You should do this in annual benefit statements, transfer and retirement packs as well as in customer telephone calls and digital customer journeys. TPR expect this every time income drawdown is asked for and not just on the first request.

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DUE DILIGENCE PROCESS

Please see the Appendix for a transfer request process flowchart which may be of help.

3.1 Transfer Request Received – Initial Analysis

Initial analysis should determine whether detailed due diligence is required. This guidance is in addition to your normal transfer processes.

As a minimum, schemes would collect the following information prior to initial analysis:

- Member requesting transfer: name and address
- Financial adviser (where required): firms name, address and FCA registration number
- Receiving scheme: name, address, HMRC registration number, payment details, type of scheme and the identity of the scheme administrator.
- QROPS registration number (for an overseas scheme)

3.1.1 Initial Analysis – Stage One

When a transfer request is received take each of the following steps:

STEP	RESPONSE
i. Is this a recognised 'club' or group transfer (e.g. Public-Sector Transfer Club, known group or recipient)?	If yes, 'Very low Risk', proceed with the transfer. If no, go to (ii).
ii. Has your organisation identified the administrator/ scheme as not presenting a risk of pension scam activity? (Transferring organisations may hold well developed and maintained lists of these "clean" lists) where transfers may be safely "fast tracked". Please note that appropriate due diligence should be carried out on transfers which are transacted using automated systems, such as Origo until such time as the administrator/scheme has been identified as not presenting a risk. Origo, or another automated system provider, will carry out their own due diligence on the administrator/scheme but this should complement and not replace your own checks.	If yes, 'Very low Risk', proceed with the transfer. If no, go to (iii).
iii. Has your organisation identified this scheme/ administrator address as suspicious? (Your organisation should keep a list of these and you should also check the FCA warning list)[7].	If yes, 'Risk', further analysis should still be undertaken as each case should be considered on its merits. If Yes or No, go to Initial Analysis Stage Two.

[7]https://www.fca.org.uk/scamsmart/warning-list?gclid=CjwKCAiA6aSABhApEiwA6Cbmysk1hX0iP2Uv0pymBrvYr15A7M4OEW8uznZ0EeWYaczMNyyNwR G2RoCuBAQAvD_BwE

3.1.2 Initial Analysis – Stage Two

STEP	RESPONSE
STEP 1 – The Adviser	
If financial advice has been received, does the adviser have the appropriate permissions? If they do, the appropriate permission of "Advising on Pension Transfers and Pension Opt Outs" will be shown under the Permission section of the FCA register entry for the advice firm. Please note that EEA inward passported advisers do not have permissions as the advice is not within IMD or MiFID passporting regimes. Such an adviser may however apply to the FCA for a Part IV Top-up permission as outlined in Section 13A.7 of the FCA Handbook and, if granted, this will enable the adviser to advise on pension transfers. If the adviser is providing advice on the investments to be made in the receiving scheme, they should also have the "Advising on investments" permission. Some arrangements will however have a dual-adviser model with one adviser providing the transfer advice and another providing the investments advice.	If pension transfer advice has been given to the member but without the appropriate permissions, you should complete the remaining questions in this section and in Questions to ask Members so that full information on the proposed transfer is captured and can be reported to the appropriate authorities as outlined in Section 8. For a transfer of safeguarded benefits (for example a defined benefit (DB) transfer of more than £30,000), as the advice has been given without the appropriate permissions, the transfer should be refused as the advice is not appropriate independent advice[8]. The adviser is undertaking illegal activity and will be committing two offences: **1.** fraud by false representation contrary to s2 Fraud Act 2006 and **2.** carrying on regulated activity without authorisation contrary to s19 Financial Services & Markets Act 2000. If an adviser advises a member to transfer their pension, it is reasonable to assume that the adviser will be receiving money as a result of this activity, and that money would constitute criminal property[9]. In the case of an overseas adviser, the money that becomes criminal property starts by being in the UK held by the ceding scheme; to get to the overseas adviser it must necessarily leave the jurisdiction and this gives rise to an additional "removing from the jurisdiction" offence[10]. Ceding providers in this situation should consider the "arrangements" offence in s328 POCA and its broad scope of facilitation. In such circumstances, a Suspicious Activity Report (SAR) should be submitted to the National Crime Agency. please refer to the guidance on SAR reporting in Refusing a transfer and reporting (Section 8). For transfers which do not involve safeguarded benefits (for example a defined contribution (DC) transfer), where it is not a legal requirement that advice is given, you may wish to consider whether this will affect whether the receiving scheme can accept the transfer and to contact the trustees of the receiving scheme for clarification. They may well then refuse to accept the transfer owing to the nature of the advice which has been provided. You should however seek independent legal advice before refusing the transfer.

[8]Please refer to Section 48 of the Pension Schemes Act 2015.
[9]Proceeds of Crime Act 2002, s340(3)
[10]Proceeds of Crime Act 2002, s371(1)(e)

Has a suitability report been provided to the member (for transfers from defined benefit schemes where the transfer value is in excess of £30,000)?	If a suitability report has been provided it is not a matter for the transferring scheme to review the quality of the advice given but if the transfer documentation includes a suitability report, you may wish to review it as the FCA has identified that template reports with typos and obvious errors have been used and such a report would indicate a concern.
Has there been a high volume of transfer requests from the same adviser or intermediary over a short period of time.	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 2 – Contract Based Schemes (e.g. SIPPS)	
If the receiving pension is a contract based scheme, including a SIPP, is the provider or operator FCA registered? These providers and operators should be FCA regulated but the FCA would still expect further due diligence if initial due diligence identified a pension scam risk.	Check the Financial Services Register https://register.fca.org.uk/ to establish whether the provider or operator is authorised: A contract based scheme provider must be both FCA authorised and hold the relevant regulatory permission, e.g. to "establish, operate or wind up a personal pension scheme". Overseas firms passporting into the UK cannot provide a SIPP. They must be directly authorised with this permission as it is not passportable. Some purported SIPP overseas providers claim that they are passporting into the UK and are covered by the EEA passport on the Financial Services Register. This is not correct. If no, further analysis should still be undertaken as although the transfer must be refused owing to the absence of FCA registration, you should complete the remaining questions in this section and in Questions to ask Members so that full information on the proposed transfer is captured and can be reported to the appropriate authorities as outlined in Section 8. If yes, go to Step Three.

STEP 3 – Previous Scam Links	
Is there any suspicion that the scheme administrator, trustee or anyone connected with the schemes has been linked to pension scamming or to anyone connected with the administration or trusteeship of a scam? Google searches, internal lists, or FCA cases may identify individuals involved in scams.	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 4 – Third Party Introducer	
Is an unregulated introducer involved in the transfer request?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 5 – Planned Investments[11]	
Are any of the investments in the new scheme considered to be “high risk” or unregulated? If the member is not able to say what the investments will be, this is a concern as FCA regulated advice must specify the investments recommended.	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
Is the transfer to an overseas scheme or includes overseas investments and the member is resident in the UK?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
Could the proposed investment structures be considered complicated or unorthodox?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
Will any of the investments be in an offshore bond?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
Are any of the investments listed on the FCA list of types of investment and pension scams?[12]	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 6 – The New Scheme	
Is the receiving scheme newly established? (for example within the last 12 months)	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 7 – The Employer (for a transfer to an occupational pension scheme	
Is the employer actively trading?	If No, ask the member questions outlined in Section 3.1.3.

[11]Please note that the ceding scheme is not assessing whether the proposed investment is appropriate for the individual but rather whether there is a potential cause for concern
[12]https://www.fca.org.uk/scamsmart/types-investment-and-pension-scams

STEP 8 – Transfer History	
Has there been a high volume of transfers to or from a single scheme over a short period of time?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 9 – Scheme Hopping	
Is the customer transferring out of a new defined contribution arrangements soon after transferring in from a defined benefit scheme?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 10 – Loss Of Existing Guarantees	
Will any valuable guarantees be lost on transfer (either defined benefits or a guaranteed growth rate on a With Profits Fund for a defined contribution scheme for example)?	If Yes, complete remaining questions in this section and ask the member questions outlined in Section 3.1.3.
STEP 11 – Other	
Are there any other causes of concern?	See below

The above questions are designed to help you determine whether you can proceed with the transfer without further due diligence and/or referral to the member (i.e. whether it can be fast tracked to payment or refusal). **If there are no concerns you may consider this sufficient to make payment.** If there are concerns, you should continue to Section 3.1.3 Questions To Ask Members.

3.1.3 Initial Analysis – Questions To Ask Members

You will need information for the initial analysis. You should decide how to obtain this information, but it is recommended that you should consider telephoning the member directly if possible to ask some basic questions about the reasons for the transfer, how the request came about and who, if anyone, is providing advice to the member. Alternatively, you may prefer to invite the member to call you at a time which is convenient for them.

This approach, which requires a sensible dialogue and interpersonal skills, is more likely to yield important clues about the proposed transfer than merely corresponding by letter or email. You should keep good records and retain an audit trail of the information requested and the decision you have made.

For a list of member questions, please refer to Resource One within the Resources Pack. Please also refer to Resource Two in the Resources Pack in respect of member vulnerability. This may be established during the call with the member or you may have a record of such vulnerability on your existing customer records.

3.2 Additional Information Sources

Trustees and providers should request information from HMRC to complement their own due diligence on any transfers of concern.

3.2.1 HMRC requests

If, at any point during the due diligence process, you are unable to rule out the risk of a pension scam you should query the registration of the receiving scheme with HMRC and include all the relevant details. To do this you must either attach your enquiry letter to an email and send it to pensionschemes@hmrc.gov.uk or write to:

Pension Schemes Services
HM Revenue & Customs
BX9 1GH
United Kingdom

It may be several months before HMRC respond. You should therefore bear this in mind when considering the timing of your request to HMRC.

Currently HMRC provides one of the following responses to the enquiry:

RESPONSE 1	RESPONSE 2
HMRC confirms that at this time, both of the following apply: • the receiving scheme is registered with HMRC and is not subject to a deregistration notice; and • the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension scams.	HMRC only provide confirmation of registration status when both of the following apply: • the receiving scheme is registered with HMRC and is not subject to a deregistration notice; and • the information held by HMRC does not indicate a significant risk of the scheme being established or being used to facilitate pension scams. At this time one or both of these conditions does not apply. HMRC is therefore unable to provide the confirmation you have requested.

If response 1 is received, you should undertake further due diligence. It should be stressed that a response 1 is not an HMRC endorsement or recommendation in respect of the scheme.

If response 2 is received, then HMRC have been unable to confirm that the receiving scheme is either a registered pension scheme (one of the requirements for the statutory transfer right to exist[13]) or that the scheme does not present a significant pension scam risk. The transfer should be refused if a response 2 is received.

If the receiving scheme is not HMRC registered, then the payment would be unauthorised and subject to tax charges.

[13] A recent Pensions Ombudsman determination (PO-16907 Mr N) has confirmed that an inability to confirm the registered status of a receiving scheme was a basis to assert that the scheme had failed to comply with the prescribed requirements of section 95 of the Pension Schemes Act 1993. Ombudsman determinations are not binding although serve as a guidance.

3.2.2 Law Enforcement Intelligence

Project Bloom (the multi-agency initiative chaired by the Pensions Regulator which aims to combat pension scams) arranged for reports of pension scams to be made to Action Fraud (the details for reporting are included in the Resources Pack – Resource Seven), and these reports are analysed by the National Fraud Intelligence Bureau (NFIB). On occasion, NFIB uses the reports to produce alerts for the industry that can be used as part of the due diligence process.

3.3 Further Due Diligence

This additional due diligence covers a wide range of issues, including regulatory, geographical link and receiving scheme provenance. You should record the evidence you collect and the decisions you make. It is up to you how you collect the information.

For a detailed list of example questions, why they might be asked and how information can be obtained, please refer to Resource Three within the Resources Pack.

The example questions can be used to obtain the information you will use to decide whether a scheme or administrator poses a pension scam risk. You can choose which questions to use and can ask alternative questions which achieve the same purpose.

There are also examples of evidence you can collect on which to base your decision. Again, you should determine the exact evidence you require. It is essential that evidence is collected and retained. When you have gathered your evidence, Section 4 Determine Pension Scam Risk provides guidance on deciding whether to transfer.

Please note – A QROPS (Qualifying Recognised Overseas Pension Schemes) is the only overseas pension scheme to which a UK registered pension scheme can pay a "recognised transfer". If an overseas pension scheme is not a QROPS, a transfer to that scheme will not be a recognised transfer and will therefore be an unauthorised payment. HMRC maintain a list[14] of schemes which have told HMRC that they meet the conditions to be Recognised Overseas Pension Scheme (ROPS). Please note that the HMRC list only contains schemes that have agreed to be on the list. A scheme may be a ROPS but not on the list.

The status of the receiving scheme should be checked on the date of the proposed transfer payment, and the outcome of that check recorded and evidenced. This may be done by a screenshot which should include the website address and a date stamp. It is essential to verify that the transfer is being paid to the scheme included on the list, and not to another scheme using a virtually identical name (e.g. a clone scheme).

[14] https://www.gov.uk/guidance/check-the-recognised-overseas-pension-schemes-notification-list

3.4 Additional considerations

3.4.1 Member Contact

Although obtaining written information will provide an audit trail of the information requested and your decision, it is recommended that you should consider contacting the member by telephone as early as possible. Some trustees and administrators have found that when the "transfer journey" is fully discussed with the member that they are then able to fully understand the risks in transferring and reassess their decision. Some have then sought alternative regulated advice. This telephone conversation is not cold calling.

Trustees and administrators can suggest that the member calls The Pensions Advisory Service (TPAS)[14] (now part of the Money and Pensions Service – but both will be rebranded as MoneyHelper from June 2021[15]) to talk through the proposed transfer and the warning signs. TPAS will provide an impartial view on the transfer and this might overcome any members' concerns that the due diligence process is a delaying tactic to frustrate the transfer. Some members may have been "coached" by a scammer as to what to say when contacted by a ceding scheme. Calls should be recorded where possible.

3.4.2 Extensions

If the trustees or administrators of an occupational pension scheme need more time for due diligence, then it may be possible to apply to TPR for an extension of the normal six-month time period for transfer payments.

An extension request should be considered early in the due diligence process, in order to make sure the application is made **at least six weeks** before the extension is required. As the decision to extend is made by the Determinations Panel, it is not possible to accommodate later submissions. It should be noted that pension scam concerns are not specifically referenced in the criteria for an extension but the following may be applicable:

- The member has not taken all such steps as the trustees can reasonably expect in order to satisfy them of any matter which falls to be established before they can properly carry out what the member requires
- The trustees have not been provided with such information as they reasonably require properly to carry out what the member requires

Where an extension is applied for, the trustees should notify the member – see Resource Five in the Resources Pack.

3.4.3 Withdrawal of transfer application

During the due diligence process, a member could withdraw their transfer request. This could be because the information you have supplied and the questions you have asked have led the member to realise that the transfer is possibly connected with a pension scam.

Where this happens you should document any identified concerns and retain any written evidence and notes or recording of calls in case further transfer requests to the same scheme are received from this or another member. A sample decision sheet has been provided to help organisations with this process in the Resource Pack (Resource Four).

[15]Please note that in their Combat Scams Pledge, TPR has given the direction to TPAS rather than to Pension Wise.
[16]https://maps.org.uk/moneyhelper/?cn-reloaded=1

04 DETERMINE PENSION SCAM RISK

Once you have completed the due diligence process, and if the member has not withdrawn their transfer request, you need to decide how to proceed.

4.1 Governance

Trustees/providers need to have appropriate procedures and governance in place to determine the pension scam risk and whether to transfer. This may include independent legal advice.

Your decision may be challenged by the receiving scheme or by a member complaint. You should have sufficient support and governance in place to deal with such challenges or complaints. If you are able to show that the principles in this Code have been followed, this should assist in any defence against allegations that the decision has been made incorrectly; although following the Code still might not prevent a claim being brought.

All concerns, any written evidence and notes or recording of calls should be documented. A sample decision sheet has been provided within the Resources Pack (see Resource Four). You must also ensure that you comply with data protection requirements.

4.2 Determination

The individual(s) making the decision should collate and review the information gathered during the due diligence process. The decisions needed are set out below:

- If you consider that there is no material pension scam risk, you should pay the transfer.
- If there has been a failure to supply information or respond to information requests, you should consider what inferences can be drawn from that failure.
- If you consider that there is a material pension scam risk, you should consider whether the member has a right to transfer, meaning there is an obligation to transfer.
- A transfer right could be either a statutory right, or a right arising under the transferring scheme rules. For QROPS transfers, this may require specialist legal expertise or language skills. If there is a discretionary transfer power, the information gathered during the due diligence process should be considered when deciding whether to transfer.

If you consider that the member does not have a transfer right, you should be prepared to explain why to the member.

If the member does have a transfer right, but you consider that there is a material pension scam risk, you will need to decide whether to transfer. You should assess the risks associated with either blocking the transfer or allowing it to proceed. You may also wish to consider whether the member genuinely understands the risks and potential financial consequences of the transfer. You may wish to seek independent legal advice on the potential consequences of either decision. If the member has a statutory right to a transfer, then ultimately you may have to pay.

If you decide that the transfer should be made, before doing so you should telephone the member to discuss the concerns you have identified with them. They may change their mind and request that the transfer is cancelled if they understand your concerns and the risks to their pension savings if they proceed. If they insist on transferring, to minimise the risk of a future complaint or legal challenge to your decision to transfer, you should obtain a suitably robust discharge signed by the member before making the transfer. The discharge should clearly articulate the concerns you have identified but be mindful of your legal obligations in terms of "tipping off". Please see Section 7 for more information.

If you decide that the transfer should be refused, you should to explain why to the member.

All transfers of concern should be reported. This includes:

- All transfers which are refused.
- All transfers which are paid under discharge when a statutory transfer right is identified and the member is insistent on transferring.
- All transfers which are cancelled by the member when the concerns have been raised with them.

If you subsequently find that you have made a transfer in good faith that you now deem to be suspicious, you should report it to the appropriate authorities. Please see Section 8 for guidance on how to report.

4.3 Management Information

Appropriate management information should be developed and maintained. This should include details of all transfers refused, cancelled by the member when concerns have been raised with them and transfers paid under discharge at the insistence of the member. Please also note the requirements in Section 3.1.2.8 and 3.1.2.9 regarding Transfer History and Scheme Hopping respectively.

05
REFUSING A TRANSFER

If you decide that the transfer should not proceed, you should:

- Telephone the member whenever possible and you must confirm your decision in writing and clearly articulate your reasons for refusal. Please see Resources Pack, Resource Three for example letter wording. If there is no statutory transfer right but the rules contain a discretion to pay, it should be explained that a discretionary decision has been made.
- Where appropriate, e.g. where there is an active letter of authority, write to the administrator/adviser and you should inform them that you are unable to make the transfer – see Resources Pack, Resource Three.

06
MEMBER APPEALS

A member may challenge a decision to refuse a transfer. This challenge may be informal or part of a formal complaint. You should be prepared to explain to the member why the transfer was refused.

As part of the challenge, the member may provide sufficient additional information to satisfy the concerns that led to the transfer being refused. If so, you need to reconsider your decision.

If you decide that the transfer should still not proceed because the concerns have not been resolved, you must notify the member that the original decision not to transfer stands.

If you decide that the transfer should proceed, then the transfer should be processed as quickly and efficiently as possible. You could ask the member to complete a 'discharge form' as outlined in Section 7.

07 DISCHARGE FORMS AND INSISTENT MEMBERS

When dealing with an insistent member, you should, if possible, ask the member to call TPAS or Pensionwise (now part of the Money and Pensions Service[17]) for free impartial guidance on the risks of scams before completing the member's request. Where the member refuses or continues with his or her decision, you should record this fact. Where you transfer despite a material pension scam risk, you should ask the member to complete a discharge form. You should ensure the discharge form is sufficiently robust to reduce your risk and reflects the fact that the member wishes to transfer despite the risks you've highlighted. An example discharge form is set out in Resource Six of the Resources Pack.

You may wish to take independent legal advice on the content of any discharge form and should note that a discharge form signed by the member may not eliminate risk altogether and may not be capable of binding the member's beneficiaries.

[17] https://maps.org.uk/moneyhelper/?cn-reloaded=1

08 REPORTING

PSIG continues to work with both the Pensions Regulator and Action Fraud as part of the Project Bloom work to improve and rationalise industry reporting but in the meantime, reporting should be made as follows:

Either to:

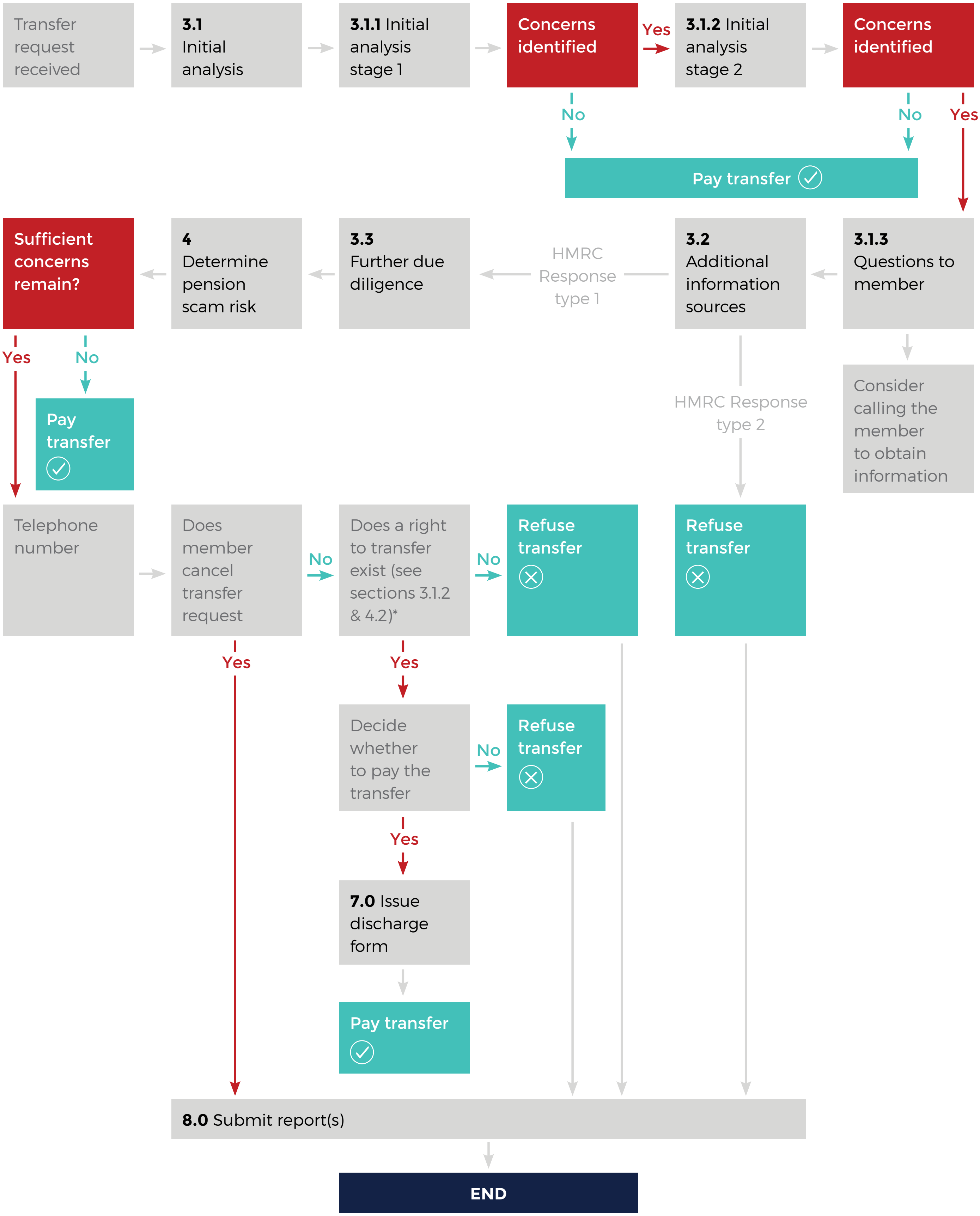
- Action Fraud Please see Resources Pack, Resource Six for detailed guidance on how to request access to the reporting system and then to report using the Business Reporting Tool or:.
- For Scottish pension scheme members, by calling 101 for Police Scotland

In addition:

- FCA reporting should be made via:
- http://www.fca.org.uk/consumers/protect-yourself/report-an-unauthorised-firm to report individuals who appear to be undertaking regulated pension transfer advice but are not authorised to do so and via
- 'IntelligenceConsumerHarm@fca.org.uk' for all transfers of concern.
- TPR reporting should be made via wb@tpr.gov.uk if a statutory transfer payment for an occupational pension scheme has been refused "where all of the requirements are met and you consider the request valid but the warning signs of a scam are too strong for you to be comfortable with any other course of action."
- You may also have a duty to report breaches of the law, as set out in TPR's Code of Practice 1: reporting breaches of the law – http://www.thepensionsregulator.gov.uk/codes/code-reporting-breaches.aspx.
- National Crime Agency (NCA) reports should be made via a Suspicious Activity Report (SAR) when an overseas adviser is acting without permissions as per Section 3.1.2.
- Netcraft reporting: the National Economic Crime Centre (NECC) have also confirmed that the industry should report websites of concern to scam@netcraft.com. Netcraft is a company which provides a triage function for the National Cyber Security Centre (NCSC). There is some automation that kicks in; checks are carried out for phishing and some common malware.

Each scheme may have its own reporting process and this may be undertaken by the scheme trustees themselves, by in-house resources or by a third party administrator.

Appendix – Transfer Request Process Flowchart



*Section 3.1.2 for advising without permissions and section 4.2 for statutory transfer rights

COMBATING PENSION SCAMS:

Resources Pack

01 INTRODUCTION

In 2015, the Pensions Scams Industry Group (PSIG) developed a voluntary Code of Good Practice, written by a group of key stakeholders, including trustees, administrators, legal advisers and insurers. This Code set out suggested steps to help identify whether requested transfers should be paid.

The Code itself is not a statutory code, nor does it seek to override guidance issued by regulatory bodies. Rather, the Code of Good Practice is voluntary and seeks to set a best practice industry standard to help identify transfer requests that may be fraudulent or a scam. The Code is based on three guiding principles:

1. Transferring schemes should raise awareness of pension scams for members and beneficiaries of their scheme.

2. Transferring schemes should have robust, proportionate and both regulatory and legislatively compliant processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk.

3. Transferring schemes should generally be aware of the known current strategies of the perpetrators of pension scams in order to inform the due diligence they need to undertake and should refer to the warning flags as indicated in The Pensions Regulator's Guidance, FCA alerts and by Action Fraud.

This Resources Pack forms part of the Pensions Scams Industry Group (PSIG) Code of Good Practice and contains letter templates and reference materials which may be of assistance. The Resources Pack should be used as part of the full Code of Good Practice and readers should refer to the other Code documents as required.

02

RESOURCE ONE:

Telephone Scripts (Questions To Ask Members)

The following questions are designed to capture information reasonably required by the trustees of the existing scheme in order to undertake due diligence on the transfer request.

	ANSWER	NOTES
INTRODUCTION		
Were you approached "out of the blue" about the transfer? Was it by an e-mail, text, phone call, letter or through social media (e.g. Facebook or LinkedIn)?		
Were you offered a 'free pension review', loan or "early access to cash"?		The purpose of a pension scheme should be to provide benefits on retirement or death. Pension benefits from pension schemes cannot usually be paid before age 55 (57 from 2028) other than due to ill health, death or a Protected Pension Age[1].
Were you told that you could take advantage of a loophole, a "time-limited" offer or receive a higher tax-free lump sum as a result of transferring?		
Who first contacted you?		
Which firm do they work for?		

[1]PTM062200 – Pensions Tax Manual – HMRC internal manual – GOV.UK (www.gov.uk)

	ANSWER	NOTES
What is the address of the firm?		
Is this firm authorised by the FCA?		
ADVICE		
Who recommended that you proceed with the transfer?		
Which firm do they work for?		
What is the address of the firm?		
Is this firm authorised by the FCA to advise on pension transfers?		Regulated advice is required for transfers of safeguarded benefits over £30,000.[2] Please refer to 3.1.2 Initial Analysis – Stage Two of the Practitioner Guide for further information. If the adviser is not FCA authorised, do not provide the adviser with any information and inform the member (see sample letters in Resource Three).

[2]https://www.fca.org.uk/publication/consultation/cp17-16.pdf ; https://www.fca.org.uk/news/press-releases/fca-confirms-final-rules-improving-quality-pension-transfer-advice

	ANSWER	NOTES
Did your adviser direct you to the FCA ScamSmart website? (https://www.fca.org.uk/scamsmart/how-avoid-pension-scams)		
Has a courier been to your door to collect transfer documents?		
Have you been given a formal Advice or Suitability Report which is specific to you and your circumstances and covers your attitude to risk and the investments that will be made on your behalf?		
ALL RECEIVING SCHEMES		
Have you received a Key Features or Terms and Conditions document?		
Have any transfer requests for other pension plans (which you may have with other providers or administrators) to this scheme been refused?		
If so, do you know which providers or administrators refused to make the transfer/s and the reason/s for their refusal/s?		

	ANSWER	NOTES
FOR AN OCCUPATIONAL PENSION SCHEME INCLUDING A SMALL SELF-ADMINISTERED PENSION SCHEME (SSAS)		
Is your employer (the employer in whose name the scheme has been established) actively trading?		
What is the name of the employer (in whose name the scheme has been established)?		
What is the address of this employer?		
Who is the administrator of the receiving scheme? The administrator will be the company who is responsible for providing you with information about your pension savings (for example an annual statement).		Is the transfer advised by the same company or individuals who are administering the receiving pension?
FOR A SMALL SELF-ADMINISTERED PENSION SCHEME (SSAS)		
Have you been asked to set up your own company in order to make this transfer?		
If yes, can you provide more details about this company and your role in it?		
Are you a trustee of the SSAS?		

	ANSWER	NOTES
FOR A CONTRACT BASED SCHEME (E.G. A PERSONAL PENSION SCHEME INCLUDING A SELF INVESTED PERSONAL PENSION (SIPP))		
Is the scheme provider FCA registered?		If the provider is not FCA authorised, take action as set out in 3.1.2 Initial Analysis – Stage Two of the Practitioner Guide.
FOR A QUALIFYING RECOGNISED OVERSEAS PENSION SCHEME (QROPS)		
Who is the administrator of the QROPS? (The administrator will be the company which is responsible for providing you with information about your pension savings)		Is the transfer advised by the same company or individuals who are administering the receiving pension?
Which country are they based in?		
What is their address?		
Are you resident in that country?		
If you are not resident in the country, do you intend to move to that country?		

	ANSWER	NOTES
INVESTMENTS[3]		
When the transfer payment is made, will the payment be held in a cash account?		
Do you have a separate investment company to manage your investments?		Is the transfer advised by the same company or individuals who are managing the investments?
If so, where is this investment company based?		
What is their address?		
Is this firm authorised by the FCA?		
How will the transfer payment be invested?		
Have you been promised a specific or guaranteed rate of return? If so, what is the rate?		

[3]Please note that the ceding scheme is not assessing whether the proposed investment is appropriate for the individual but rather whether there is a potential cause for concern.

	ANSWER	NOTES
INVESTMENTS		
Will part or all of the transfer payment be invested in overseas investments? (Please note that for non-UK resident members (particularly when transferring to a QROPS) they are likely to invest into a non-UK investment and in most cases will invest into investments appropriate for their country of residence. In such circumstances, the overseas investments should not typically be a cause for concern.)		
Are any of your investments subject to an exit penalty if you wish to access or transfer the investments within an agreed period of time (for example within 5 or 10 years)?		
Are any of your investments of the type which are included on the FCA warning list? (https://www.fca.org.uk/scamsmart/types-investment-and-pension-scams)		
Are all the UK investments regulated by the FCA?		
Will any of your transfer payment be used to purchase an offshore investment bond (as per FCA warning? https://www.fca.org.uk/news/news-stories/transferring-switching-uk-pensions-international-self-invested-personal-pensions)		

	ANSWER	NOTES
FEES & CHARGES		
Have you received written details of any fees or other charges that you will have to pay?		
Do you know how the fees which will be charged will affect the value of your investments over time?		
Are you aware of how the fees you will be charged compare with the fees that apply under your current pension arrangement?		
FOR A SIPP		
Has your Scheme Provider given you details of all the charges which will be made within the pension, including in relation to any offshore bonds and underlying investments?		
RATIONALE		
Can you explain your reasons for requesting the transfer? What will you be able to achieve by transferring that you will not be able to do in your existing plan?		
Has your adviser advised you not to transfer? If so, can you explain why you wish to proceed against that advice?		

03

RESOURCE TWO:

Member Vulnerability

Do any of the responses to the Member Questions above or any other factors indicate potential Customer Vulnerability? Examples include: • low literacy, numeracy and financial capability skills • physical disability • severe or long-term illness • mental health problems • low income • consumer debt • being 'elderly', which may be associated with cognitive or dexterity impairment, sensory impairments such as hearing or sight, onset of ill-health or not being comfortable with new technology. • change in circumstances (e.g. job loss, bereavement, divorce) • lack of English language skills.	If you are an FCA regulated firm you should follow the FCA guidance[4] throughout the pension transfer request process. If you are a non-FCA regulated firm, you should consider the guidance.

[4]https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

04

RESOURCE THREE:

Additional Due Diligence Considerations

A. REGULATORY

Neither an Occupational Pension Scheme (OPS) nor its administrator need to be FCA authorised.

Personal Pension operators and insurance companies providing occupational schemes must be FCA authorised. Appropriate FCA authorisation should give substantial comfort that the scheme has not been established for suspicious purposes.

Occupational pension schemes with at least two members and Group Personal Pensions should be TPR registered.

Trustees of all OPSs must be listed as data controllers with the Information Commissioner.

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Is this an insured pension scheme? If yes, is the provider FCA regulated? / Is the SIPP Operator FCA regulated	Check the Financial Services Register	Y	Y	N/A	Y
Does the provider have the appropriate FCA permissions?	Check the Financial Services Register.	N/A	Y	N/A	Y
Are the trustees of the receiving scheme listed with the Information Commissioner's Office as Data Controllers? (If not, please provide an explanation of why they are not listed)	Letterhead paper; request other evidence of registration.	Y	Y	N/A	Y

B. EMPLOYMENT LINK

All OPSs should normally have a clear link between scheme employer and member. A lack of identifiable link or inconsistent details may be risk indicators. In most cases, a member of an OPS should be employed by a sponsoring employer. However, there can be genuine exceptions in the case of a SSAS, for example, it's possible that some SSAS members are members of a family that controls the sponsoring employer, but aren't employed by that company.

HMRC may refuse to register, or de-register, an OPS where the sponsoring employer is a dormant company. A sponsoring employer becoming dormant shouldn't cause the scheme to be deregistered.

Companies House[5] can be used to check the employer's trading status, incorporation date and director names.

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Is there an employment link?	Employment contract or evidence of holding of an office, e.g. directorship. Please note that some scammers may attempt to set up bogus employment contracts.	Y	N/A	N/A	N/A
Is there evidence of earnings from a participating or associated employer?	Request 3 months' payslips from the member/policyholder. Please note however that following the 2016 Hughes v Royal London High Court judgment, the earnings requirement for a statutory transfer is merely that there is evidence of earnings irrespective of their source. Alternative evidence, such as employment contracts may be required for zero-hours workers, or dividend payments for company directors who may not have a salary.	Y	N/A	N/A	N/A
If the member is not employed by an employer that sponsors or participates in the receiving scheme, what connection is there with the receiving scheme's members or sponsoring employer?	Membership of an OPS or SSAS might be extended to non-employees, though this might typically be for defined purposes such as schemes intended for particular affinity groups, or relatives of existing members in the case of a SSAS. OPS and SSAS are not usually marketed to third parties. Lack of association between the members and/or the sponsoring employer or its industry sector should invite further enquiry.	Y	N/A	N/A	N/A

[5]https://find-and-update.company-information.service.gov.uk/

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
When did the principal employer for the receiving scheme incorporate?	Letterhead paper or internet research to evidence that the employer was already in existence before the member asked to transfer.	Y	N/A	N/A	N/A
What is the Company registration number for the principal employer of the receiving scheme?	Letterhead paper or internet research to evidence that the employer is real.	Y	N/A	N/A	N/A
What is the business, service or trade provided by the principal employer for the receiving scheme?	Letterhead paper or internet research.	Y	N/A	N/A	N/A
Is the principal employer an active or dormant company?	Internet research or Companies House. Pension scams might involve a dormant company to suggest an employment link. A scheme sponsored by a dormant company might be de-registered now that s158 of FA2004 has been amended. Caution should be exercised on any transfer to a scheme sponsored by a dormant company.	Y	N/A	N/A	N/A

C. GEOGRAPHICAL LINK

You would normally expect an occupational pension scheme, an employer and the member to be based in a similar location, although larger companies may operate from multiple locations.

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Is the employer/provider/administrator address near to the member's home address?	Letterhead paper, internet research or member question for other evidence.	Y	N/A	N/A	N/A

D. PROVENANCE OF RECEIVING SCHEME

A pension scheme intended for pension scam purposes might have been established recently (e.g. within the last six months). It may even have been established after the transfer was requested. The sponsoring employer or the administrator may also have been established recently. They may also be operating from 'virtual' offices or using PO Boxes for correspondence.

A newly established scheme shouldn't in itself be taken as evidence of scam intent. A broad range of factors should be considered in any due diligence exercise.

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Date on which the receiving scheme was registered with HMRC.	Copy of Registration certificate and print-off from HMRC Scheme Administrator website.	Y	Y	N/A	Y
Request copies of the receiving scheme's governing documentation and formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts (if applicable).	If these documents are not forthcoming, this may indicate a risk of a pension scam. If these documents are supplied, check them for any obvious inconsistencies e.g. in relation to the identity of the sponsoring employer/administrator and the member eligibility provisions.	Y	Y	Y	Y
Is the transfer being requested in advance of the scheme being registered/established?	Compare date of transfer request with date of scheme establishment.	Y	Y	N/A	Y
Name and address of the scheme administrator, and directors for the receiving scheme and (if appropriate) company registration number.	If the scheme administrator for the receiving scheme is a company, obtain print-off from Companies House WebCheck.	Y	Y	Y	Y
Name, address, account number and sort code for the bank account of the trustees of the receiving scheme	Confirmation of trustees' and scheme's bank account details.	Y	Y	Y	Y

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Is the receiving scheme/ administrator run from a 'virtual' office?	Internet research.	Y	Y	Y	Y
Is the receiving scheme/ administrator quoting only a PO Box address?	Internet research.	Y	Y	Y	Y
If the transfer payment is not to be paid direct to the trustees' account, please provide an explanation of why the payment is being made to a different account.	Seek written explanation. For an OPS this is poor practice (and your internal controls may not allow this) and might be suspicious.	Y	Y	Y	Y
Is the administrator also FCA regulated? Although FCA regulation is not required for SSAS, the fact of FCA regulation may provide additional comfort.	Check FCA register.	Y	N/A	N/A	N/A
Has the scheme or administrator, trustees or investment companies behind the scheme been connected to investments linked to high scam risk?	Internet research. Example scam-risk investments include: • Cryptocurrencies • Carbon credit schemes • Land banking schemes • New ecological opportunities • Green oil from trees • Precious earth metal schemes • Boiler room share investment schemes • Overseas property developments • Storage pods • Car parking spaces • Loans • Unlisted shares • Illiquid investments that clearly do not match likely access timelines • 'Guaranteed' investment returns that seem unrealistic in current markets. Lack of diversification might also suggest that the investment strategy has not been designed for the member's interests.	Y	Y	Y	Y

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Are there links with other administrators / schemes / providers about which you already have suspicions of pension scam activity?	Companies House WebCheck and review director and address information – this might be suspicious. Websites may look legitimate but could be clones of legitimate companies with words copied verbatim. A strong sign is a lack of contact names, numbers or addresses.	Y	Y	Y	Y
Does the receiving scheme trustee/administrator provide scheme documentation or an opinion from a law firm or barrister?	Whilst the opinion given might be entirely legitimate and valid, attention should be paid to when it was provided and what it actually says as the lawyer giving the opinion might have had limited instructions or only given a restricted or caveated view. Scammers might instruct reputable lawyers to prepare an opinion and/or scheme documents in order to suggest legitimacy.	Y	Y	Y	Y
Does the administrator claim current accreditation from an independent body (for example PASA)?	Documentation confirming accreditation and period valid for. A check with the independent body may be appropriate.	Y	Y	Y	Y
Have a number of schemes been established recently from sponsoring employers with the same address?	Internet research – this might suggest suspicious activity.	Y	N/A	Y	N/A
Is the director(s) of the sponsoring employer or trustee company also a director of other companies incorporated at the same time?	Companies House WebCheck – this might suggest suspicious activity.	Y	N/A	Y	N/A

Question	How to gather information / Validation	OPS	PP	QROPS	Int'l SIPP
Have a number of schemes been established by administrators with the same address?	Internet research – this might suggest suspicious activity.	Y	Y	Y	Y
Have a number of schemes been established recently from the same address?	Companies House WebCheck and review director and address information – this might be suspicious.	Y	Y	Y	Y
Is the scheme connected to an unregulated investment company or is it covered by Financial Services Compensation Scheme?	Check Financial Services Register.	Y	Y	Y	Y

05

RESOURCE FOUR:

Example Letters

These example letters must be adapted for your specific circumstances. You may wish to take independent legal advice on their content.

(i) Member Letter Wording

Section 3 of the Practitioners Guide refers to information that providers and trustees should ask members to supply as part of their due diligence process. If they decide to write and request further information, the following suggested wording may assist them in doing so:

Dear <Name>
Pension transfer request – policy number <insert number>

As a <scheme administrator/pension provider> we have a duty to look for signs of a pension scam when any transfer is requested. This could be a transfer of a pension to an arrangement that allows benefits to be paid out before age 55 (the earliest age from which pension benefits can normally be accessed) or promises to pay out a tax-free lump sum greater than HM Revenue & Customs allow after age 55.

They may also be proposing that the transfer payment is invested in unregulated, high-risk investments or they can promise rates of return on investments which are very unlikely to be realised.

Such information can be very misleading and, in some cases, may also be fraudulent and entirely illegal. Falling foul of a scam could mean you lose some or all of your pension savings. Please see www.pension-scams.com or www.fca.org.uk/scamsmart for more information.

To help us prevent you from being the victim of a pension scam and as part of our standard due diligence Checking process we need to ask you to answer the following questions:

Depending on the information you have already received, you may ask the member/policyholder to provide the following (or any of the other questions detailed in Resource One or Resource Three):

- Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme administrators as a result of transferring your benefits?
- How did you hear about the receiving scheme?
- Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on grounds of ill-health?
- Have you been promised a specific or guaranteed rate of return on your pension fund under the receiving scheme?

Depending on the type of receiving scheme you may consider asking the member/policyholder to provide further information and evidence. The receiving scheme type to which the question is relevant is in brackets:

- What is the name of the individual or company providing day-to-day administration services for the receiving scheme (Occupational Pension Scheme/Small Self-Administered Scheme (SSAS))?
- Does the scheme provider show a registration number from the Financial Conduct Authority (FCA) on their letterhead? What is it? (Contract-based/personal pension scheme/Self-Invested Personal Pension (SIPP))

- Who has advised you to go ahead with the transfer? Please provide evidence of their FCA registration number. (Contract-based/personal pension scheme / SIPP)
- Please send 3 months of recent payslips as evidence of employment by a participating employer of the receiving scheme (Occupational Pension Scheme).
- If you are employed by an employer that sponsors the receiving scheme, please provide the name and address of your usual place of work for the employer.
- If you are not employed by an employer that participates in the receiving scheme, please provide a brief explanation of your reasons for wishing to transfer your benefits (Occupational Pension Scheme).
- How did you become aware of the provider/adviser/receiving scheme? Did they make first contact? (OPS)
- Have you received any advice in connection with transferring your pension benefits? If so, please provide details of the organisation or company that provided you with that advice and a copy of the advice.
- During the transfer process has the receiving scheme (or its administrator) contacted you with official documentation or has all communication been by text, email and/or telephone?
- What do you want to achieve through the transfer that you can't in your current scheme?
- Have you been pressured by anyone to make a quick decision about transferring your pension?
- What have you been told about where your funds will be invested by the receiving scheme? Please send copies of any information or brochures you have been sent.

Providers and trustees might consider using the following additional wording when writing to members considering transferring pension funds to international SIPPs if there are concerns that these are being used to facilitate pension scams (in such cases, the member may well be based overseas):

We are aware that, in your case, you are intending to transfer to an international Self-Invested Personal Pension (SIPP). Whilst many transfers to SIPPs are legitimate and involve appropriate advice, we should make you aware that there has been a developing trend of international SIPPs being used to entice pension scheme members into scams. We would refer you to the recent FCA information[6].

Particular warning signs to look out for are where you have been approached by a cold call or advised by someone overseas who has claimed to be regulated in a different country. Just because someone has claimed to be a regulated adviser and is able to show some headed paper reflecting that, it does not mean that this will be correct – and one of the hallmarks of recent scams has been individuals being given a false sense of security about the status of advisers.

You might also have been encouraged to invest your pension funds somewhere overseas and should think about whether you have sufficient information available to determine the security of such an investment.

If you are in any doubt about the status of the advice you have received or feel you have incomplete information about the nature of the investment your pension monies are going to be transferred into, we would encourage you either to get in touch with us to discuss those concerns or the Pensions Advisory Service (TPAS) or Pensionwise, who give free and impartial guidance to people with pensions, and whose details are available from this website: https://www.pensionsadvisoryservice.org.uk/. (to be rebranded as MoneyHelper from June 2021[7])
We look forward to hearing from you.

Yours sincerely

[6]Information for consumers on transferring or switching UK pensions into international self-invested personal pensions (SIPPs)
[7]https://maps.org.uk/moneyhelper/?cn-reloaded=1

(ii) Letter to HMRC

These example letters must be adapted for your specific circumstances. You may wish to take independent legal advice on their content.

Where due diligence checks indicate pension scam activity or information requests from the other areas have not been met then you should confirm the status of the receiving scheme with HMRC. The following example wording may be helpful to you in drafting a suitable letter. You should adapt it to the circumstances of a particular case, by including an explanation as to why there are concerns about the receiving scheme.

Dear Sirs

Pension transfer request

We have received a request from <insert provider/ adviser name> to transfer the pension benefits for Mr/Mrs/Ms X <insert name of member> to <insert name of receiving scheme>.

Our transfer checks indicate a number of potential pension scam concerns in respect of the transfer. These are outlined below:

- Concern 1
- Concern 2
- Concern 3

Before we proceed with the transfer to <insert name of receiving scheme>, we would be grateful for HMRC's confirmation that the scheme is a registered pension scheme and that, to your knowledge, that you are unaware of any reason why the transfer should not proceed.

Enclosed with this letter are copies of:

- approval from the authorised signatory for <name> Administration authorising HMRC to confirm to <insert your own company name> that the <insert name of receiving scheme> is a registered scheme; and
- a copy of the HMRC PSTR confirmation letter that we have been provided with in relation to the receiving scheme.

We will await your response before progressing the member's request to transfer and would therefore be grateful for your prompt response. Please do not hesitate to contact me in the meantime if you require further information.

Yours faithfully

(iii) Unregulated Adviser Member Letter

These example letters must be adapted for your specific circumstances. You may wish to take independent legal advice on their content.

Section 3 of the Practitioners Guide refers to the requirement for persons advising on pension transfers to be authorised by the FCA to give advice regarding pension transfers. Administrators may find the following example wording useful where they need to write to a member advising that they have not provided information to the adviser in these circumstances:

Dear <Name>

Pension transfer request – policy number <insert number>

I refer to a recent letter we have received from <XYZ Retirement Benefit Scheme> requesting information regarding the above policy.

Please note that we have not provided the requested information as the company does not appear to be authorised by the Financial Conduct Authority (FCA) to give advice regarding pension transfers plans.

We can provide this information to you if you contact us directly to request this. However, before doing so, please see www.pension-scams.com or www.fca.org.uk/scamsmart for more information. Falling foul of a scam could mean you lose some or all of your pension savings.

If you have any questions or would like to discuss any concerns please contact us.

Yours sincerely

(iv) Transfer Denied – Letter to Member/ Policyholder

These example letters must be adapted for your specific circumstances. You may wish to take independent legal advice on their content.

Dear <Name>

Pension transfer request – policy number <insert number>

We are contacting you in relation to a pension transfer request that we have received from <Provider Name> that instructs us to transfer your fund from your <Insert Brand Name> pension to <Insert Scheme Name>.

We have taken a decision not to transfer the fund to the <Insert Scheme Name> owing to the possible risk of a pension scam [and because you do not have a legal right to transfer].

IN ORDER TO AVOID ASSISTING SCAMMERS IMPROVE THEIR TECHNIQUES, CARE SHOULD BE TAKEN IN GIVING SPECIFIC DETAIL AS TO WHY THE DECISION HAS BEEN MADE NOT TO PROCEED WITH THIS TRANSFER (WHILST NOTING THAT MEMBERS MAY COMPLAIN IF INSUFFICIENT DETAIL IS GIVEN – CONSIDER TAKING LEGAL ADVICE).

Having reviewed the information available to us we have decided not to make the transfer to this scheme as we believe there are reasonable grounds to suspect that the scheme to which you have chosen to transfer may be involved in pension scams.

We apologise for any inconvenience that this may cause, however we hope that you can appreciate the need for us to be vigilant in order to protect you. Falling foul of a scam could mean you lose some or all of your pension savings. Please see www.pension-scams.com or www.fca.org.uk/scamsmart for more information.

What should I do next?

[If you still wish to proceed with the transfer despite the warning signs we see, we would ask you to call the Pensions Advisory Service (TPAS), who give free and impartial guidance to people with pensions, and whose details are available from this website: https://www.pensionsadvisoryservice.org.uk/ and confirm in writing to us that you have spoken to TPAS and wish to transfer despite our concerns. In this situation we will process the transfer, but you agree that it is done entirely at your own personal risk and that you and your beneficiaries will have no future claim on the pension scheme.]

[or]

[Your pension fund will remain safely with us until we hear from you further or you approach your selected retirement age, when we will contact you again. If you still want to consider a transfer to another provider, we would recommend that you seek independent financial advice from an adviser regulated by the Financial Conduct Authority. We will not refuse transfers to schemes where we are satisfied that there is no risk of pension scamming. If you need help in finding a regulated adviser, please visit www.unbiased.co.uk.]

If you have any questions, you can call <scheme/ provider Customer Helpline on xxx xxxx xxxx> or write to us if you prefer. Our contact details and opening hours are shown at the top of this letter, together with the policy number and our reference details, which we will need you to provide when contacting us.

Yours sincerely

(v) Transfer Denied – Letter To Receiving Scheme

These example letters must be adapted for your specific circumstances. You may wish to take independent legal advice on their content.

Dear <Name>

<Pension transfer request for policyholder <Name> – policy number <insert number>
<Pension transfer request for member <Name> – scheme name <insert number>

I refer to your request of <Date> to transfer the above pension to the <Provider Name> scheme.

We have reviewed the information available to us, and we have concluded that we are unable to process the transfer due to the possible risk of a pension scam [and because the member does not have a legal right to transfer].

IN ORDER TO AVOID ASSISTING SCAMMERS IMPROVE THEIR TECHNIQUES, CARE SHOULD BE TAKEN IN GIVING SPECIFIC DETAIL AS TO WHY THE DECISION HAS BEEN MADE NOT TO PROCEED WITH THIS TRANSFER (WHILST NOTING THAT MEMBERS MAY COMPLAIN IF INSUFFICIENT DETAIL IS GIVEN – CONSIDER TAKING LEGAL ADVICE).

We are therefore unable to process this transfer, and we will be writing to the <policyholder/member> to inform them of our decision.

Yours sincerely

(vi) Suggested Wording to Member Where the Trustee/Provider of an OPS Have Applied to TPR for an Extension to the 6 Month Deadline

If scheme administrators need more time to carry out the necessary due diligence Checks, they may apply to TPR within the normal time period for payment of statutory transfers for an extension to that time period. TPR may not however be able to reply to all such applications within the time period.

Administrators may find the following example wording helpful in updating members:

The trustees/provider have, within the statutory period, made an application to the Pensions Regulator (TPR) for an extension in respect of the consideration of payment of a transfer to a registered pension scheme. TPR has the power to grant an extension in accordance with the statutory regulations.

The trustees/provider now await TPR's response.

06

RESOURCE FIVE:

Recording Decisions

(i) Example Pension Scam Decision Sheet

MEMBER INFORMATION				
Name				
Scheme Name				
Plan Number				
Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
MEMBER QUESTIONS				
INTRODUCTION				
Were you approached “out of the blue” about the transfer? Was it by an e-mail, text, phone call, letter or through social media (e.g. Facebook or LinkedIn)?'	☐	☐	☐	
Were you offered a ‘free pension review’, loan or “early access to cash”?	☐	☐	☐	
Were you told that you could take advantage of a loophole, a “time-limited” offer or receive a higher tax-free lump sum as a result of transferring?	☐	☐	☐	
Who first contacted you?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
MEMBER QUESTIONS				
Which firm do they work for?	☐	☐	☐	
What is the address of the firm?	☐	☐	☐	
Is this firm authorised by the FCA?	☐	☐	☐	
ADVICE				
Who recommended that you proceed with the transfer?	☐	☐	☐	
Which firm do they work for?	☐	☐	☐	
What is the address of the firm?	☐	☐	☐	
Is this firm authorised by the FCA to advise on pension transfers?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
ADVICE				
Did your adviser direct you to the FCA ScamSmart website? (https://www.fca.org.uk/scamsmart/how-avoid-pension-scams)	☐	☐	☐	
Has a courier been to your door to collect transfer documents?	☐	☐	☐	
Have you been given a formal Advice or Suitability Report which is specific to you and your circumstances and covers your attitude to risk and the investments that will be made on your behalf?	☐	☐	☐	
ALL RECEIVING SCHEMES				
Have you received a Key Features or Terms and Conditions document?	☐	☐	☐	
Have any transfer requests for other pension plans (which you may have with other providers or administrators) to this scheme been refused?	☐	☐	☐	
If so, do you know which providers or administrators refused to make the transfer/s and the reason/s for their refusal/s?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
FOR AN OCCUPATIONAL PENSION SCHEME OR A SMALL SELF-ADMINISTERED PENSION SCHEME (SSAS)				
Is your employer (the employer in whose name the scheme has been established) actively trading?	☐	☐	☐	
What is the name of the employer (in whose name the scheme has been established)?	☐	☐	☐	
What is the address of this employer?	☐	☐	☐	
Who is the administrator of the receiving scheme? The administrator will be the company who is responsible for providing you with information about your pension savings (for example an annual statement).	☐	☐	☐	
FOR A SMALL SELF-ADMINISTERED PENSION SCHEME (SSAS)				
Have you been asked to set up your own company in order to make this transfer?	☐	☐	☐	
If yes, can you provide more details about this company and your role in it?	☐	☐	☐	
Are you a trustee of the SSAS?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
FOR A CONTRACT BASED SCHEME (E.G. A PERSONAL PENSION SCHEME OR A SELF INVESTED PERSONAL PENSION (SIPP))				
Is the scheme provider FCA registered?	☐	☐	☐	
FOR A QUALIFYING RECOGNISED OVERSEAS PENSION SCHEME (QROPS)				
Who is the administrator of the QROPS? (The administrator will be the company which is responsible for providing you with information about your pension savings)	☐	☐	☐	
Which country are they based in?	☐	☐	☐	
What is their address?	☐	☐	☐	
Are you resident in that country?	☐	☐	☐	
If you are not resident in the country, do you intend to move to that country?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
INVESTMENTS				
When the transfer payment is made, will the payment be held in a cash account?	☐	☐	☐	
Do you have a separate investment company to manage your investments?	☐	☐	☐	
If so, where is this investment company based?	☐	☐	☐	
What is their address?	☐	☐	☐	
Is this firm authorised by the FCA?	☐	☐	☐	
How will the transfer payment be invested?	☐	☐	☐	
Have you been promised a specific or guaranteed rate of return? If so, what is the rate?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
INVESTMENTS				
Will part or all of the transfer payment be invested in overseas investments?	☐	☐	☐	
Are any of your investments subject to an exit penalty if you wish to access or transfer the investments within an agreed period of time (for example within 5 or 10 years)?	☐	☐	☐	
Are any of your investments of the type which are included on the FCA warning list? (https://www.fca.org.uk/scamsmart/types-investment-and-pension-scams)	☐	☐	☐	
Are all the UK investments regulated by the FCA?	☐	☐	☐	
Will any of your transfer payment be used to purchase an offshore investment bond (as per FCA warning? https://www.fca.org.uk/news/news-stories/transferring-switching-uk-pensions-international-self-invested-personal-pensions)	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
FEES & CHARGES				
Have you received written details of any fees or other charges that you will have to pay?	☐	☐	☐	
Do you know how the fees which will be charged will affect the value of your investments over time?	☐	☐	☐	
Are you aware of how the fees you will be charged compare with the fees that apply under your current pension arrangement?	☐	☐	☐	
FOR A SIPP				
Has your Scheme Provider given you details of all the charges which will be made within the pension, including in relation to any offshore bonds and underlying investments?	☐	☐	☐	
RATIONALE				
Can you explain your reasons for requesting the transfer? What will you be able to achieve by transferring that you will not be able to do in your existing plan?	☐	☐	☐	
Has your adviser advised you not to transfer? If so, can you explain why you wish to proceed against that advice?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
VULNERABILITY				
Could the member be considered to be vulnerable?	☐	☐	☐	
ADDITIONAL DUE DILIGENCE				
REGULATORY				
Is this an insured pension scheme? If yes, is the provider FCA regulated? / Is the SIPP Operator regulated?	☐	☐	☐	
Does the provider have the appropriate FCA permissions?	☐	☐	☐	
Are the trustees of the receiving scheme listed with the Information Commissioner's Office as Data Controllers? (If not, please provide an explanation of why they are not listed)	☐	☐	☐	
EMPLOYMENT LINK				
Is there an employment link?	☐	☐	☐	
Is there evidence of earnings from a participating or associated employer?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
EMPLOYMENT LINK				
If the member is not employed by an employer that sponsors or participates in the receiving scheme, what connection is there with the receiving scheme's members or sponsoring employer?	☐	☐	☐	
When did the principal employer for the receiving scheme incorporate?	☐	☐	☐	
What is the Company registration number for the principal employer of the receiving scheme?	☐	☐	☐	
What is the business, service or trade provided by the principal employer for the receiving scheme?	☐	☐	☐	
Is the principal employer an active or dormant company?	☐	☐	☐	
GEOGRAPHICAL LINK				
Is the employer/provider/administrator address near to the member's home address?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
PROVENANCE OF RECEIVING SCHEME				
Date on which the receiving scheme was registered with HMRC.	☐	☐	☐	
Request copies of the receiving scheme's governing documentation and formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts (if applicable).	☐	☐	☐	
Is the transfer being requested in advance of the scheme being registered / established?	☐	☐	☐	
Name and address of the scheme administrator, and directors for the receiving scheme and (if appropriate) company registration number.	☐	☐	☐	
Name, address, account number and sort code for the bank account of the trustees of the receiving scheme.	☐	☐	☐	
Is the receiving scheme/administrator run from a 'virtual' office?	☐	☐	☐	
Is the receiving scheme/administrator quoting only a PO Box address?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
PROVENANCE OF RECEIVING SCHEME				
If the transfer payment is not to be paid direct to the trustees' account, please provide an explanation of why the payment is being made to a different account.	☐	☐	☐	
Is the administrator also FCA regulated? Although FCA regulation is not required for SSAS, the fact of FCA regulation may provide additional comfort.	☐	☐	☐	
Has the scheme or administrator, trustees or investment companies behind the scheme been connected to investments linked to high scam risk?	☐	☐	☐	
Are there links with other administrators / schemes / providers about which you already have suspicions of pension scam activity?	☐	☐	☐	
Does the receiving scheme trustee/ administrator provide scheme documentation or an opinion from a law firm or barrister?	☐	☐	☐	
Does the administrator claim current accreditation from an independent body (for example PASA)?	☐	☐	☐	
Have a number of schemes been established recently from sponsoring employers with the same address?	☐	☐	☐	

Factors/Indicators (includes questions which you may have asked the member)	Concern (✓)	No Concern (✓)	N.A (✓)	Evidence (explain or add link)
PROVENANCE OF RECEIVING SCHEME				
Is the director(s) of the sponsoring employer or trustee company also a director of other companies incorporated at the same time?	☐	☐	☐	
Have a number of schemes been established by administrators with the same address?	☐	☐	☐	
Have a number of schemes been established recently from the same address?	☐	☐	☐	
Is the scheme connected to an unregulated investment company or is it covered by Financial Services Compensation Scheme?	☐	☐	☐	
SUMMARY				
Administrator to set out recommendation based on due diligence carried out				
DECISION				
Trustee/scheme manager to record decision				

07

RESOURCE SIX:

Example Discharge Form Wording

This discharge wording must be adapted for your specific circumstances. You may wish to take independent legal advice on the content of any discharge form and in particular whether to include the square bracketed sections. You should note that a discharge form signed by the member may not eliminate risk altogether and may not be capable of binding the member's beneficiaries.

Declaration, indemnity and discharge:
I confirm that I have read and understood <insert name of existing administrator>'s letter dated <Date> and the additional information published by the Pensions Regulator about pension scams supplied with it and I confirm that I still wish to proceed with the transfer to <insert scheme name>. I confirm the following:

- I have been advised by the Trustees of the <XYZ Pension Scheme> to seek and obtain independent financial advice from a financial adviser authorised by the Financial Conduct Authority (FCA). If the value of your safeguarded benefits (benefits other than money purchase or cash balance benefits) exceeds £30,000, then you must take advice.
- I have / have not* obtained financial advice from: .... FCA Registration No .... (Insert name of financial adviser, if applicable)
- I confirm that I was asked to contact The Pensions Advisory Service for free, impartial guidance on the risks of pension scams and I did / did not* [insert date of contact here] and that I fully understand the risks.
- I understand the risk that following the transfer my funds may be invested in alternative higher risk assets and this is my responsibility.
- I understand and acknowledge that the Trustees of the <XYZ Pension Scheme> have a statutory obligation to report certain transfers to HM Revenue & Customs (HMRC) and will carry out that obligation.
- I understand and acknowledge that if I access any of the funds before the age of 55 (except in limited circumstances of ill-health) this will result in an unauthorised payment under tax legislation and I will be required to declare this to HMRC and will be personally liable to pay tax and other charges, normally totalling 55% of any such unauthorised payment, and I agree to settle such charges from my personal assets. If I fail to declare an unauthorised payment to HMRC, I may be charged further penalties.
- I understand that when accessing any of the funds the maximum that can normally be paid tax free is 25%.
- I hereby indemnify the Trustees of the <XYZ Pension Scheme> in respect of any additional tax and/or sanction charges that may be levied upon them in relation to this transfer.
- I fully discharge the Trustees of the <XYZ Pension Scheme> from their obligation to provide any benefits to me or my beneficiaries if the transfer is paid.
- I hold the Trustees of the <XYZ Pension Scheme> harmless from and against all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation, consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) from any source, resulting from my decision to proceed with my transfer request.

- I confirm that any information provided about me by the receiving scheme/adviser has been verified by me as factual and correct and that the Trustees of the **<XYZ Pension Scheme>** are in no way responsible for any quotation or any literature issued by the receiving scheme/adviser.
- If, after completing the transfer, I feel that I may have been scammed, I understand that it is recommended that I report the matter to Action Fraud at [insert] and/or contact TPAS at [ ] for guidance.

* delete as applicable

Signed:

....

Member name

Dated:

....

In the presence of:

....

(Witness name – IN CAPITALS)

....

....

(Witness address)

....

(Witness signature)

08

RESOURCE SEVEN:

Action Fraud Reporting

Trustees, administrators and providers should continue to report scams and potential scams using the Action Fraud Expert Reporting Tool.

PSIG would highlight however that the only crime type available is "Pension Liberation Fraud" rather than "Pension Scams". It is pension scamming rather than pension liberation which now accounts for the vast majority of transfer requests of concern.

There are also two issues with the reporting tool:

1. The "Business Victim" is prepopulated with the submitter's details. There is currently no ability to change this. Explanatory commentary should be added to highlight the position to Action Fraud.

2. The system looks for the amount of money which has been "lost" and then the amount which has been "recovered". For the industry, the money will not be lost or recovered but rather not paid at all or paid and not recovered. Again, explanatory commentary should be added.

In addition, PSIG would highlight that as industry reporting will typically be information reports rather than actual crime reports, no feedback from Action Fraud will be received. Some industry users had found the lack of feedback frustrating.

Access to the tool should be requested by email to Action Fraud at nfcrc-brtadmin@city-of-londonpolice.pmm.police.uk. The request should contain the following details:

Name of member of staff for whom access is being requested

- Their email address
- Company
- Position
- Telephone Number

Guidance in using the tool is provided in the following document:

National Fraud & Cyber Crime Reporting Centre
a part of the City of London Police

EXPERT REPORTING TOOL BUSINESS USER GUIDE

November 2017 Version 3.0

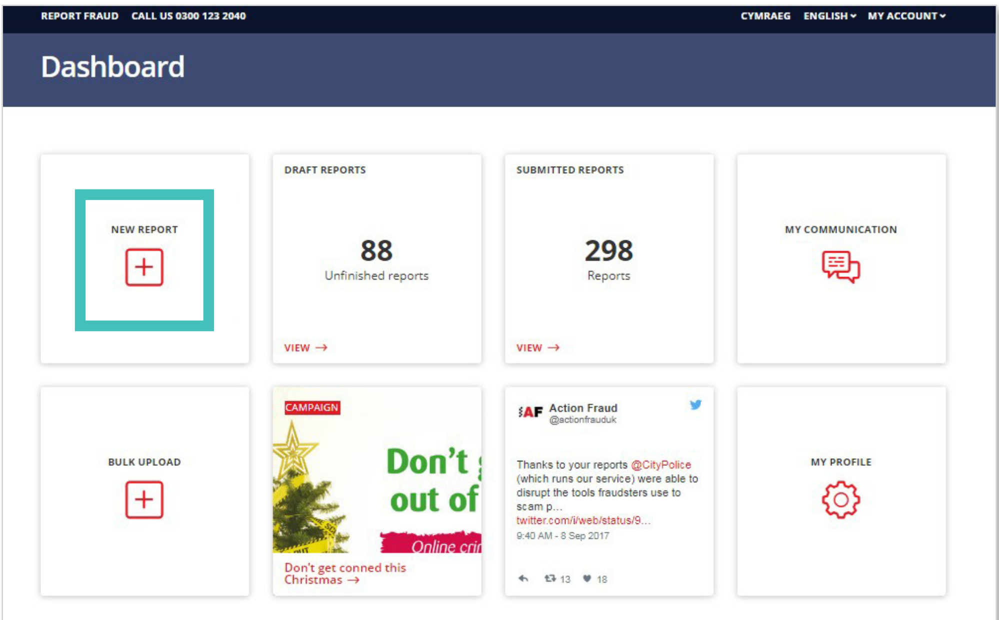
(i) Introduction
The Action Fraud Expert Reporting Tool has been designed for business users who have a regular requirement to report fraud crime on behalf of their organisation.

This User Guide explains how to:

- Submit crime and information reports on behalf of a business
- Save a draft report to complete later
- Copy data to a new report
- Track status of submitted reports

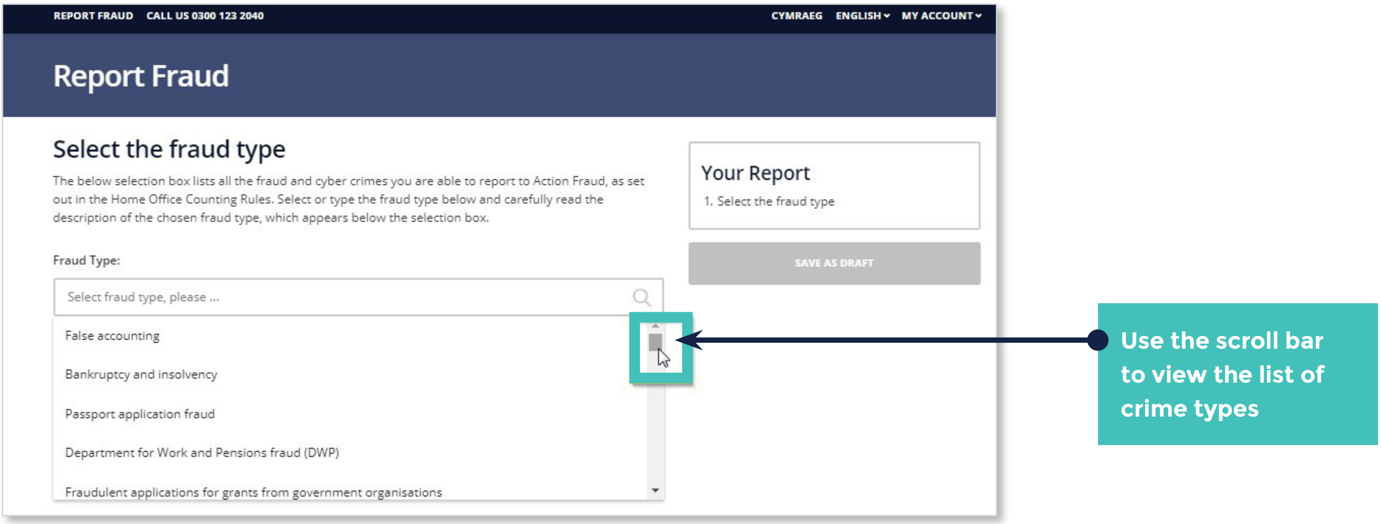
To access the Expert Reporting Tool users must be registered with the Action Fraud service as an expert user.

(ii) Accessing the Reporting Tool
Login to the Action Fraud Dashboard
To begin a new report, select the **NEW REPORT** tile from the dashboard homepage

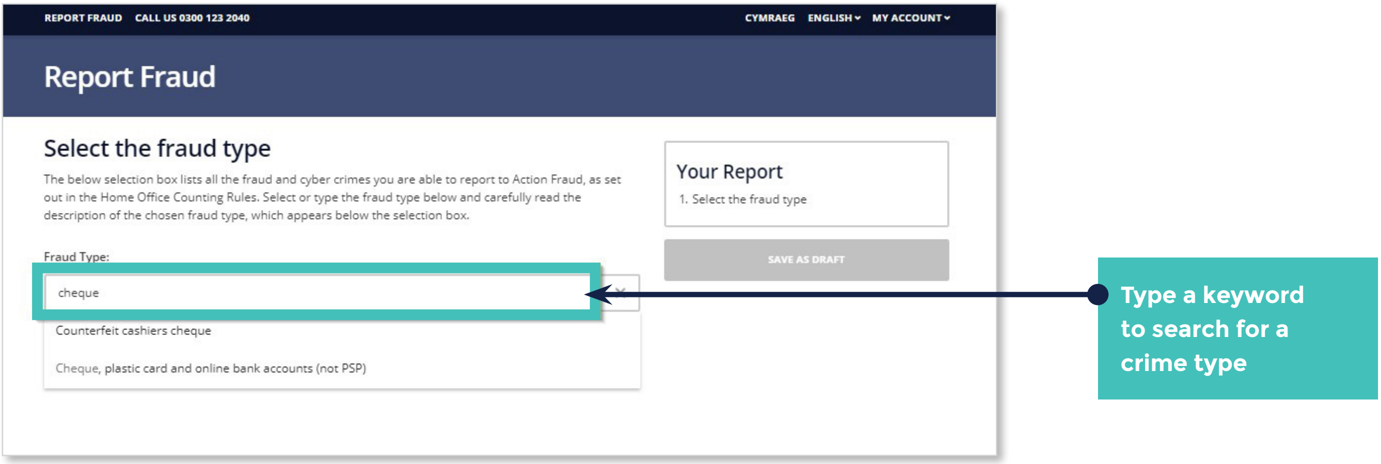


(iii) Select Crime Type
Select the crime type category for the new report, as defined in the Home Office Counting Rules for Fraud 2017.

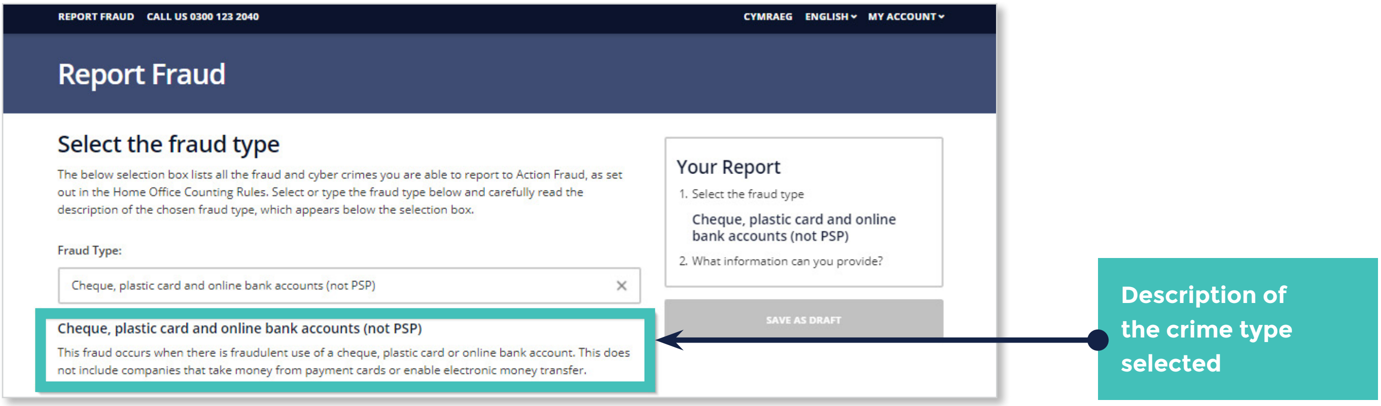
To select a crime type, click in the search box to expand the list.



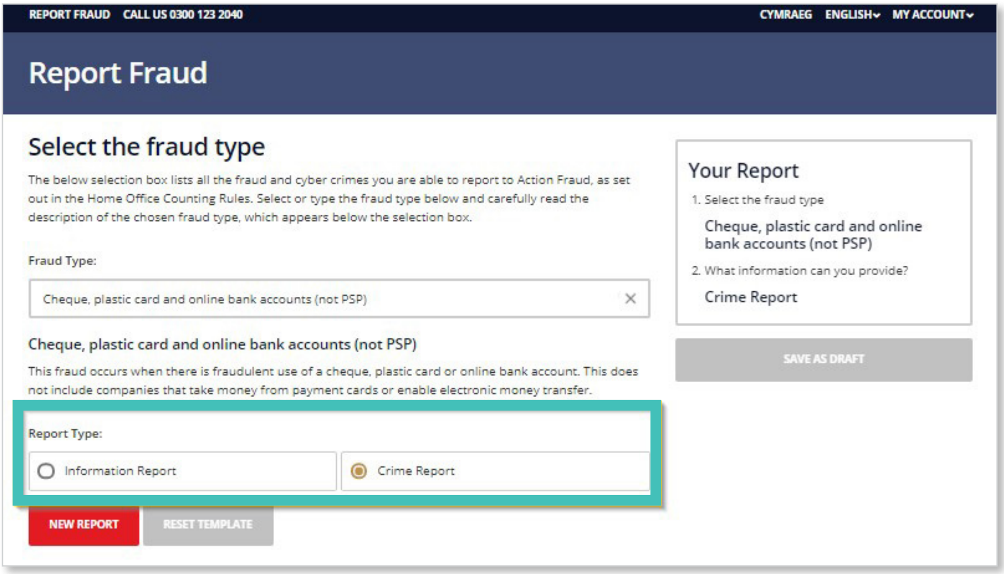
To search for a crime type, enter a keyword into the search box



When a crime type is selected, a short description of that category will display below



(iv) Select Report Type
Select a radio button to indicate if it is a crime or information report



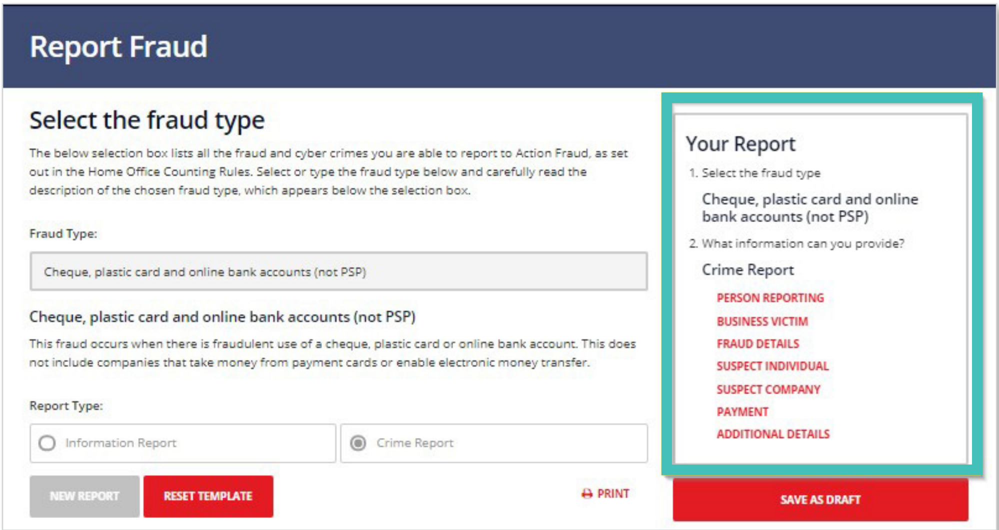
Select **'NEW REPORT'** to begin data entry

If you have selected the incorrect crime category or report type, select **'RESET TEMPLATE'** to change this information. **NOTE:** any data already entered will be lost if you reset the template, unless you have saved a draft.

(v) Data Entry
The report is structured around the following sections:

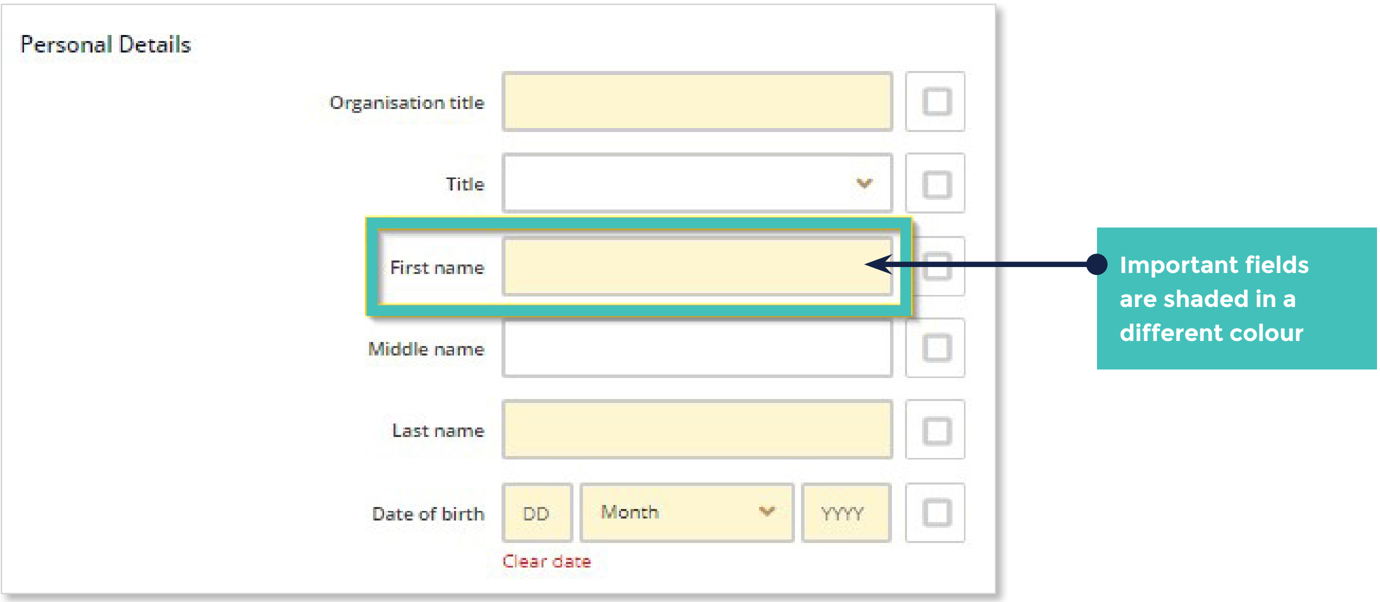
- **Person Reporting** – your details
- **Business Victim** – details of the business you are reporting for
- **Fraud Details** – monetary loss, evidence, and other crime type specific details
- **Suspect Individual** – details of individual suspects
- **Suspect Company** – details of suspect companies
- **Payments** – details of payments made by the victim
- **Additional Details** – free text field to provide a summary of the report

To navigate through the report, either scroll down the page to each section, or jump directly to a section by clicking on the relevant heading within the box to the right.

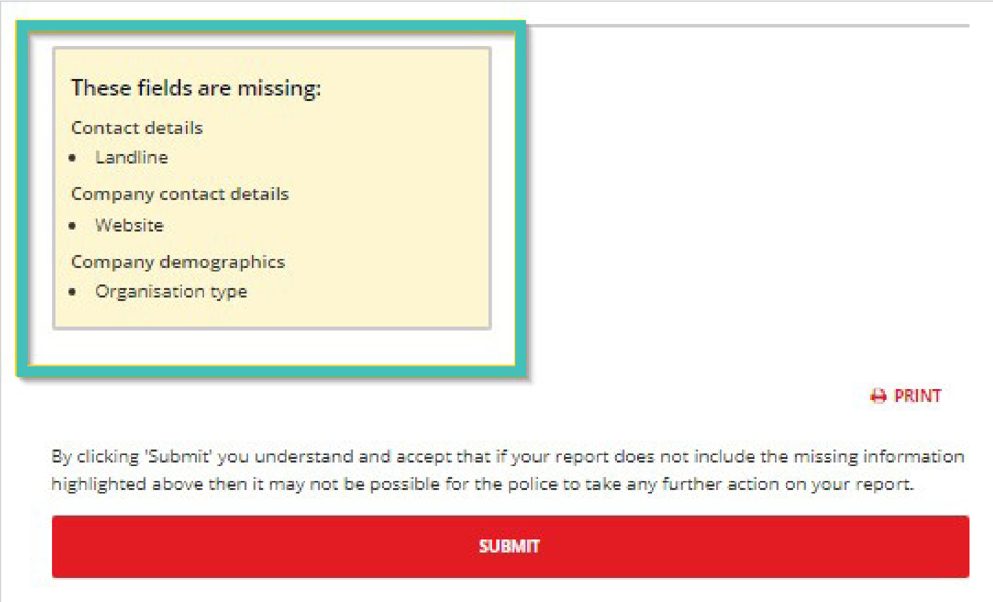


5.1 Important Fields

Certain fields in the report are marked as important to complete. These fields are highlighted in a different colour:



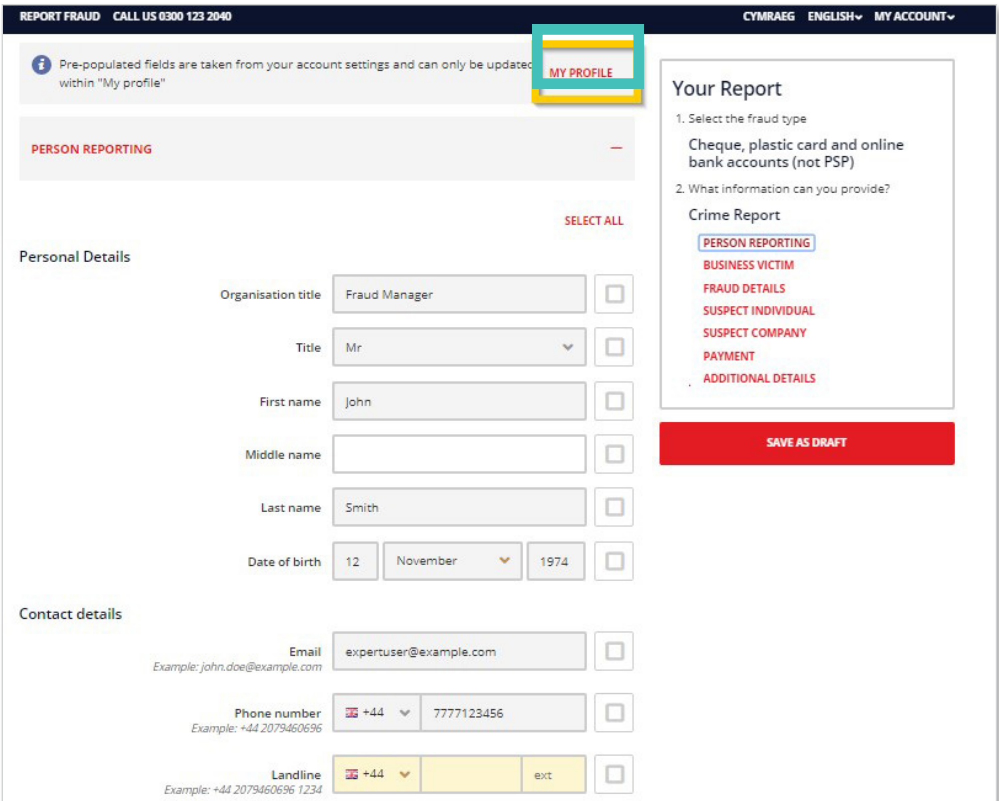
Any important fields that are not competed will be highlighted at the bottom of the page above the Submit Button.



Whilst important, these fields are not mandatory.
If the information is not available, you can still submit the report.

5.2 Person Reporting

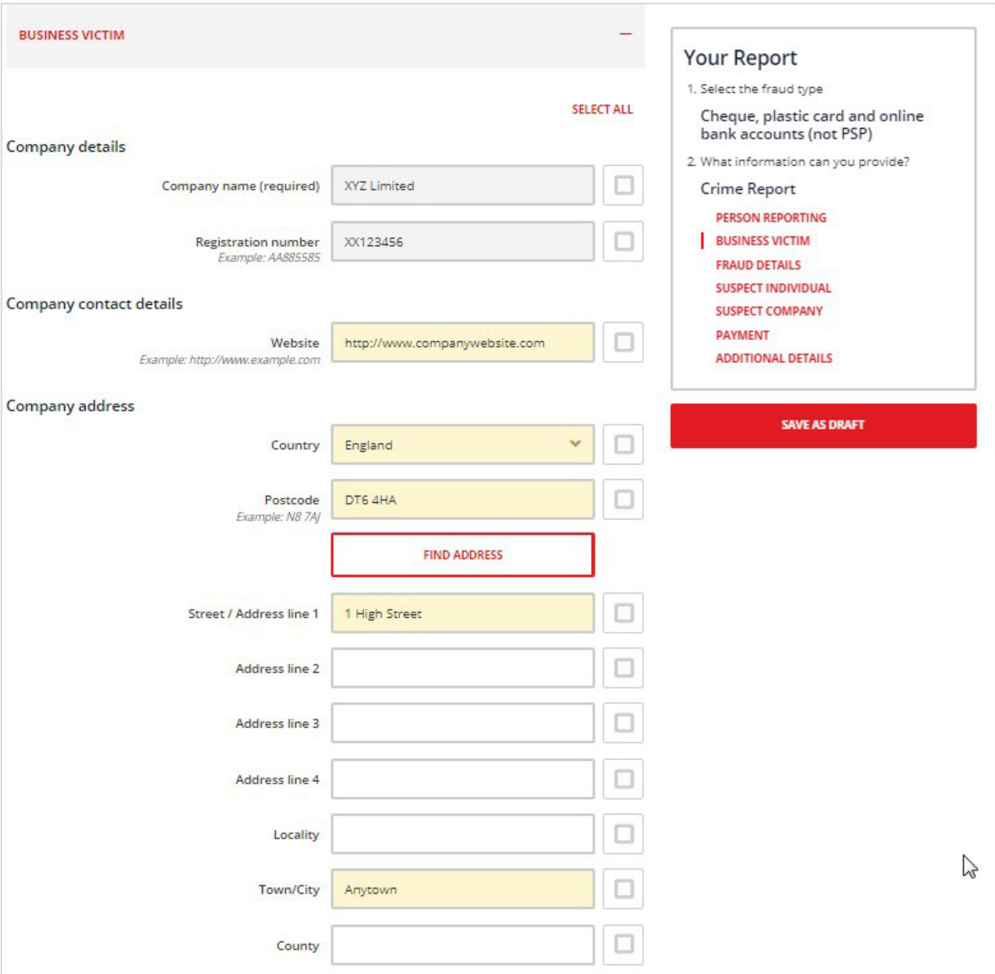
This section will be pre-populated with the data from your dashboard profile.
If you need to change any of the pre-filled information, navigate to the dashboard profile section by clicking the **'MY PROFILE'** link.



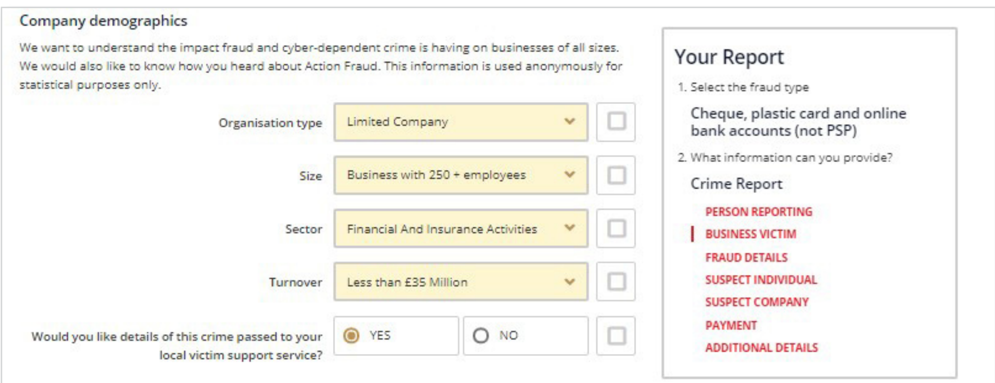
5.3 Business Victim

This section is to provide details of the organisation you are reporting for.

The Company Name and Registration Number fields will be pre-filled with the organisation details you registered with. It is not possible to change this information.



Enter the company demographics and indicate if you would like the local victim support service to be notified of the crime

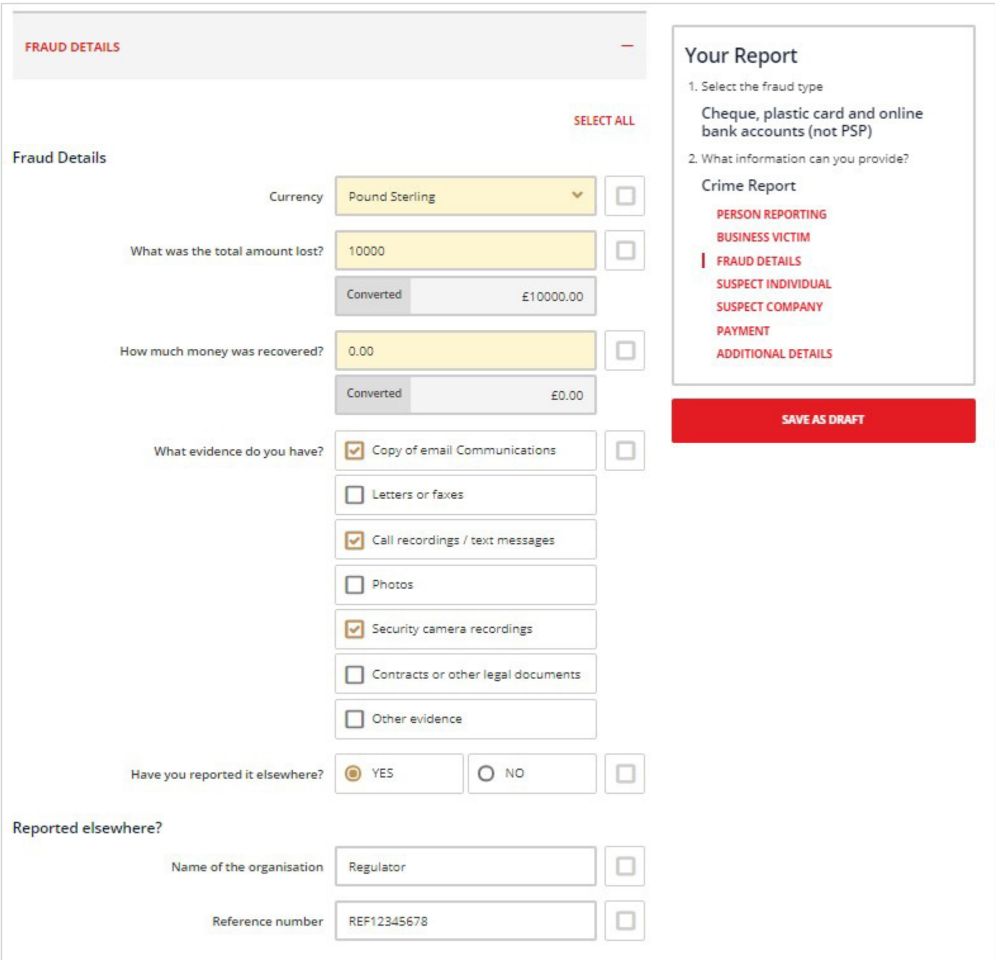


5.4 Fraud Details

This section should be used to record details of monetary loss, available evidence, and whether the crime has been reported to another organisation such as a bank or regulator.

Depending on the crime type, there may also be additional questions relating to the specific crime type selected.

If a non-UK currency is selected, the amount will automatically be converted to GBP


FRAUD DETAILS

SELECT ALL

Fraud Details

Currency: Pound Sterling

What was the total amount lost? 10000

Converted £10000.00

How much money was recovered? 0.00

Converted £0.00

What evidence do you have?
- [x] Copy of email Communications
- [ ] Letters or faxes
- [x] Call recordings / text messages
- [ ] Photos
- [x] Security camera recordings
- [ ] Contracts or other legal documents
- [ ] Other evidence

Have you reported it elsewhere? YES / NO

Reported elsewhere?

Name of the organisation: Regulator

Reference number: REF12345678

Your Report

1. Select the fraud type

Cheque, plastic card and online bank accounts (not PSP)

2. What information can you provide?

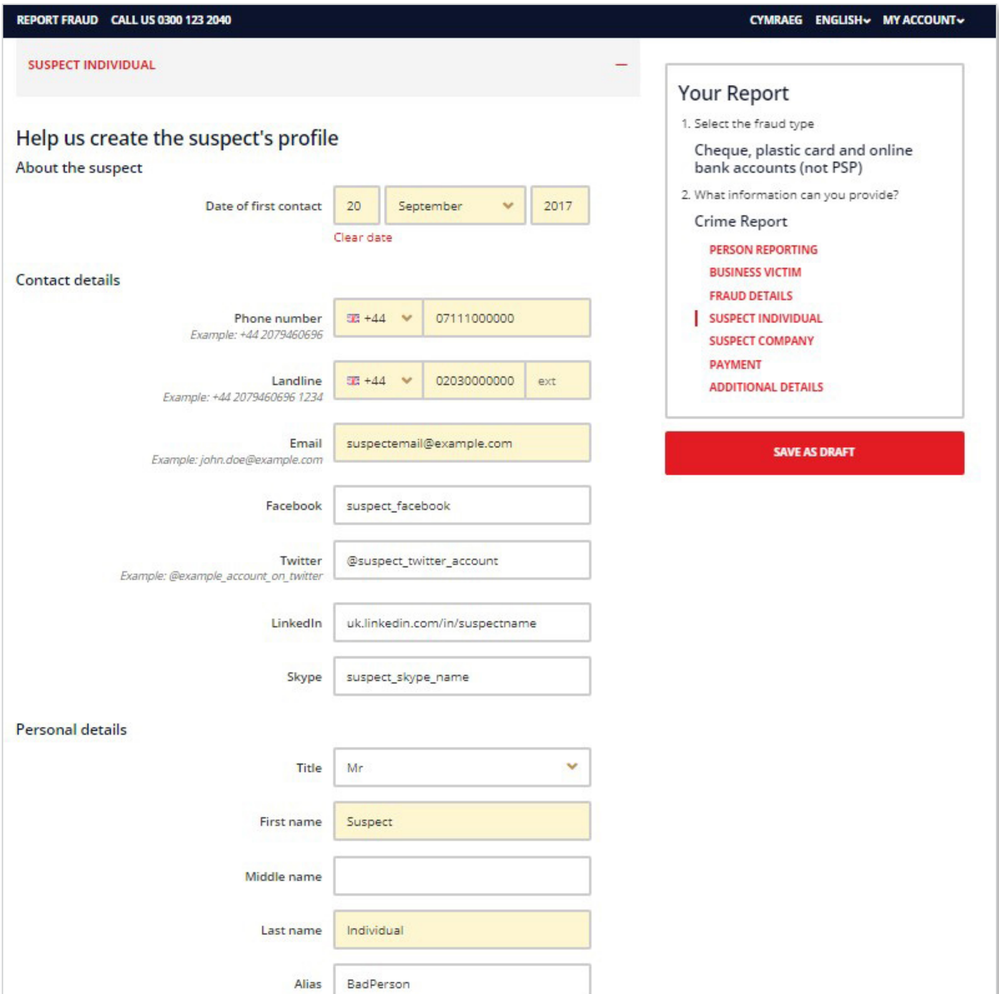
Crime Report

PERSON REPORTING
BUSINESS VICTIM
FRAUD DETAILS
SUSPECT INDIVIDUAL
SUSPECT COMPANY
PAYMENT
ADDITIONAL DETAILS

SAVE AS DRAFT

5.5 Suspect – Individual

Enter details about an individual suspect in this section.


REPORT FRAUD CALL US 0300 123 2040 CYMRAEG ENGLISH MY ACCOUNT

SUSPECT INDIVIDUAL

Help us create the suspect's profile

About the suspect

Date of first contact: 20 September 2017

Clear date

Contact details

Phone number: +44 07111000000
Example: +44 2079460696

Landline: +44 02030000000 ext
Example: +44 2079460696 1234

Email: suspectemail@example.com
Example: john.doe@example.com

Facebook: suspect_facebook

Twitter: @suspect_twitter_account
Example: @example_account_on_twitter

LinkedIn: uk.linkedin.com/in/suspectname

Skype: suspect_skype_name

Personal details

Title: Mr

First name: Suspect

Middle name:

Last name: Individual

Alias: BadPerson

Your Report

1. Select the fraud type

Cheque, plastic card and online bank accounts (not PSP)

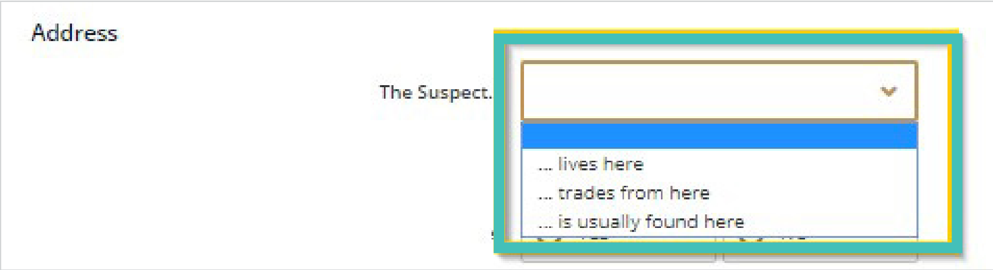
2. What information can you provide?

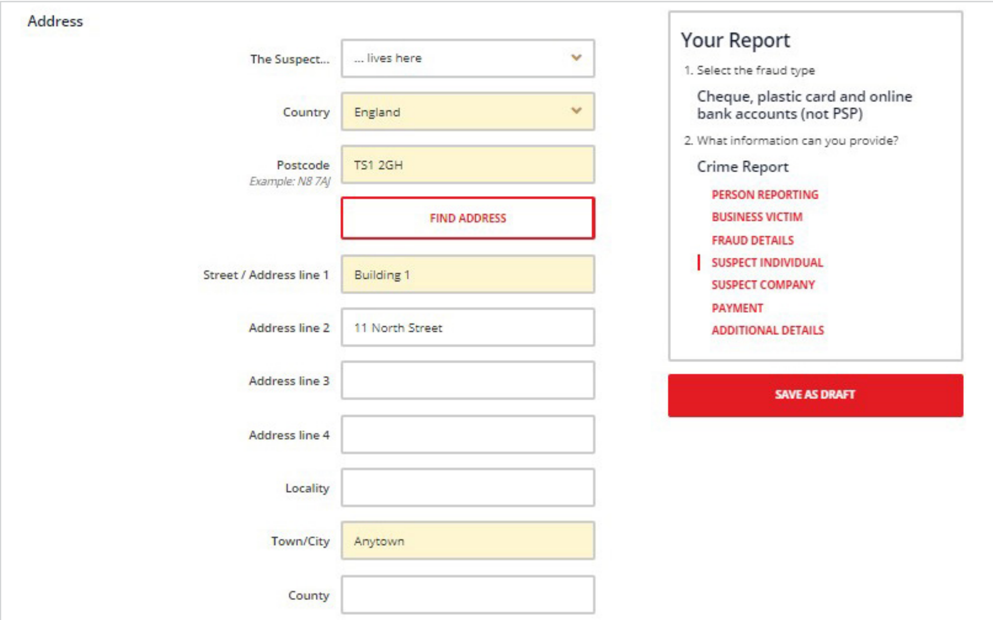
Crime Report

PERSON REPORTING
BUSINESS VICTIM
FRAUD DETAILS
SUSPECT INDIVIDUAL
SUSPECT COMPANY
PAYMENT
ADDITIONAL DETAILS

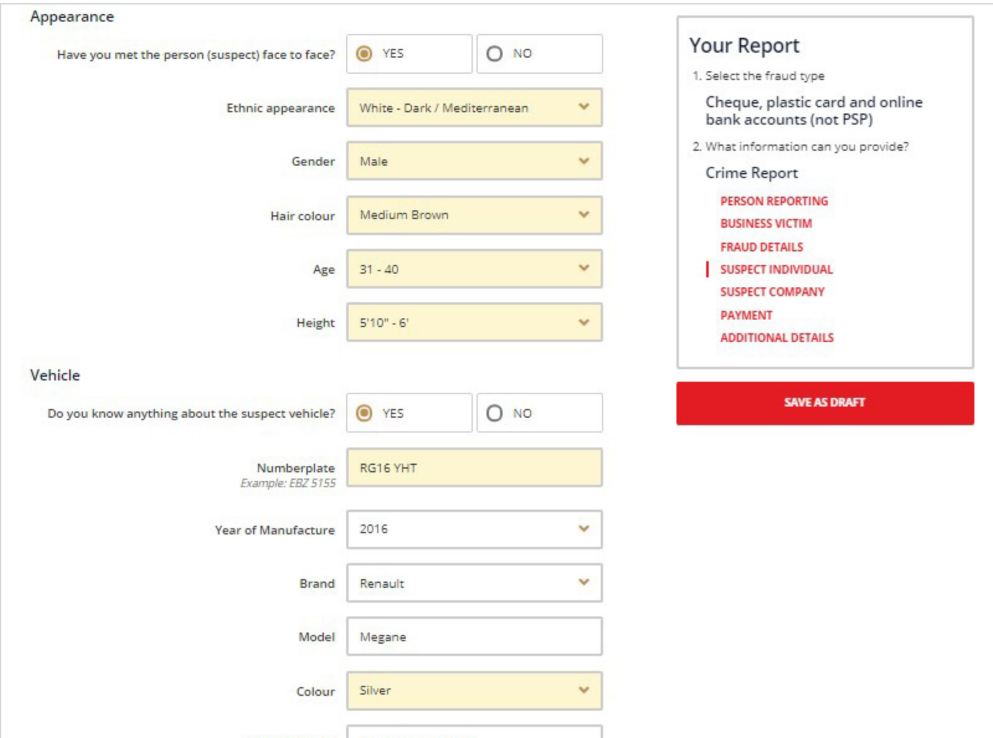
SAVE AS DRAFT

If you have an address for the suspect, select the type of address



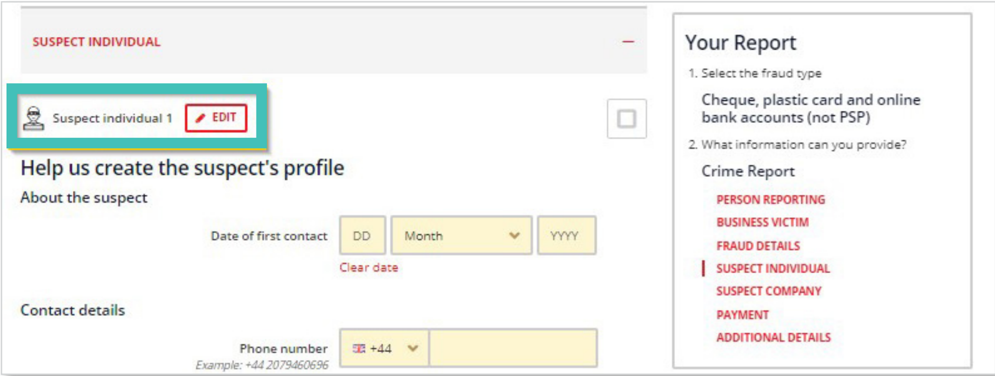


Enter any details about the suspect appearance and vehicle, if known



Click **ADD THIS ENTITY** when all available information about the suspect has been entered.

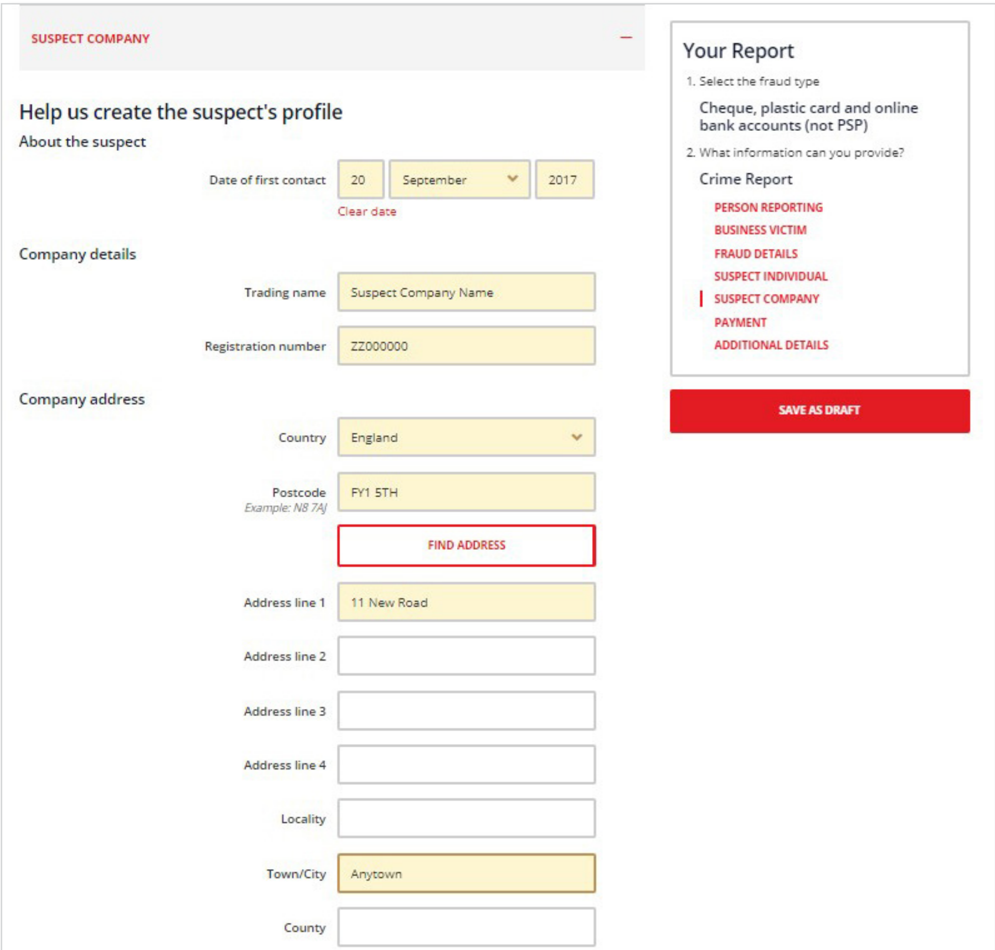
To change or add any information, click **EDIT**



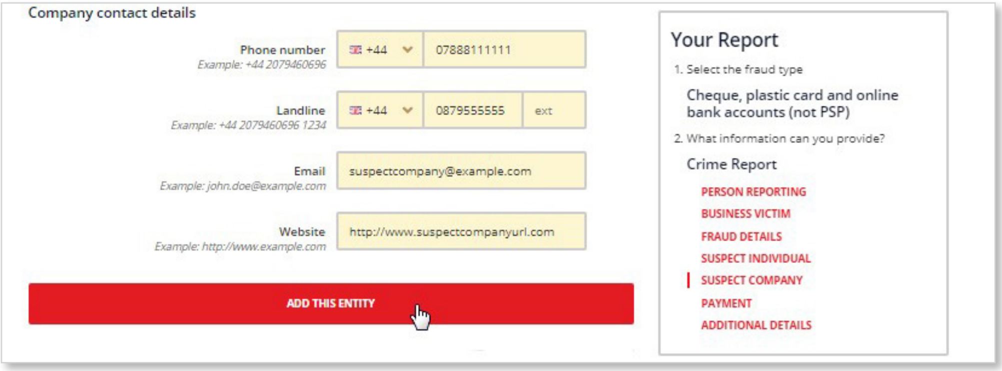
To add another suspect, repeat the previous steps. There is no limit to the number of suspects that can be added.

5.6 Suspect – Company

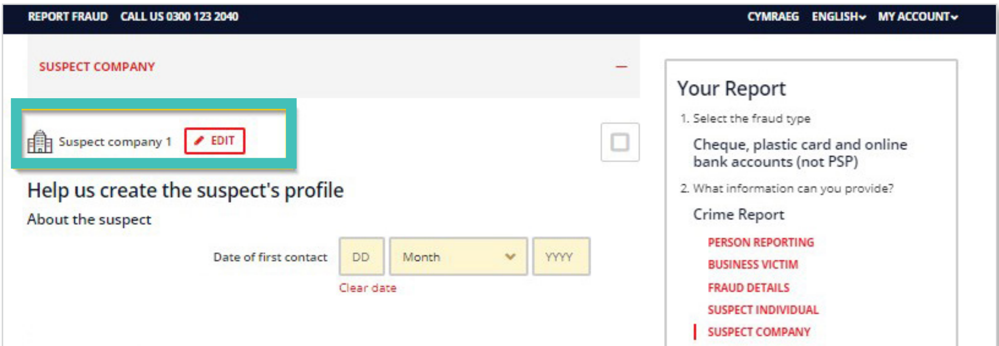
Enter details about a suspect company in this section



Click **'ADD THIS ENTITY'** when all available information about the suspect company has been entered



To change or add any information click **EDIT**

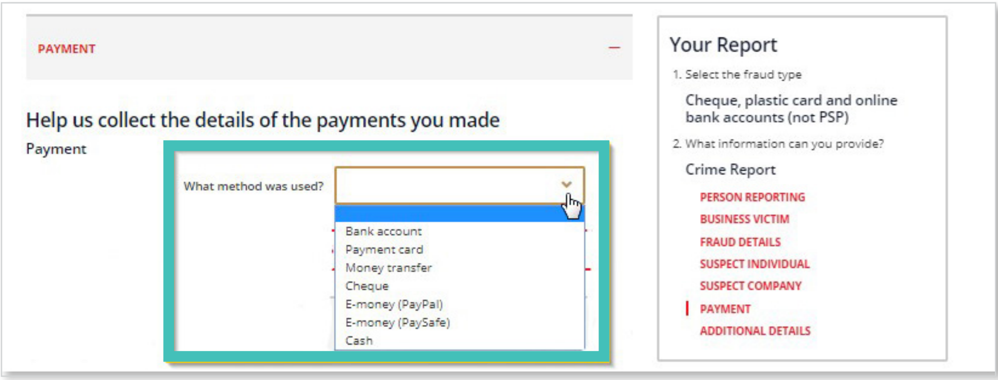


To add another suspect company, repeat the previous steps. There is no limit to the number of suspects that can be added.

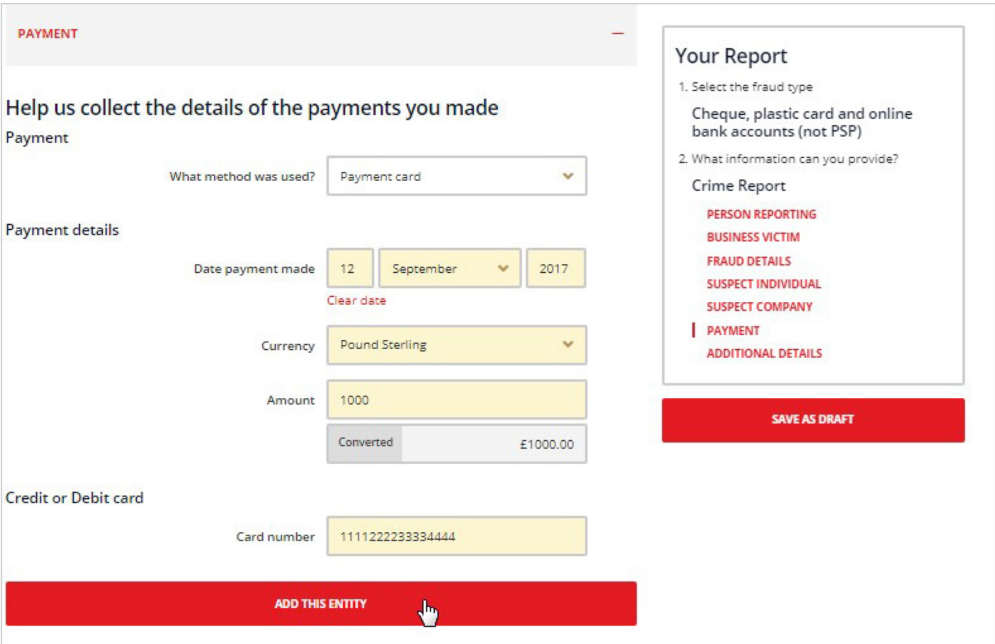
5.7 Payments

This section is to record details of any financial transactions or payments that the victim has made to the suspect. The data captured in this section will vary depending on the method of payment.

Firstly, select the method of payment from the dropdown list

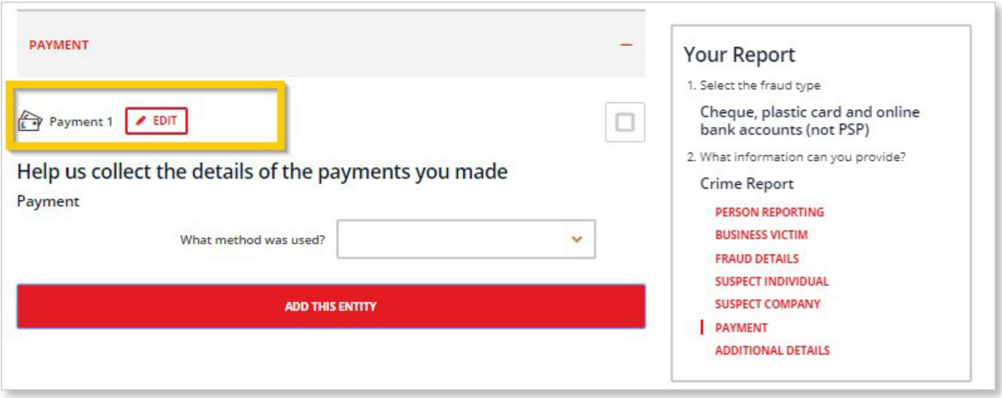


Once the method of payment has been selected, the relevant fields for that method will display. The screenshot below shows the fields that will display when 'Payment card' is selected.



Click **'ADD THIS ENTITY'** when all available information about the payment has been entered

To change or add any information, click **EDIT**

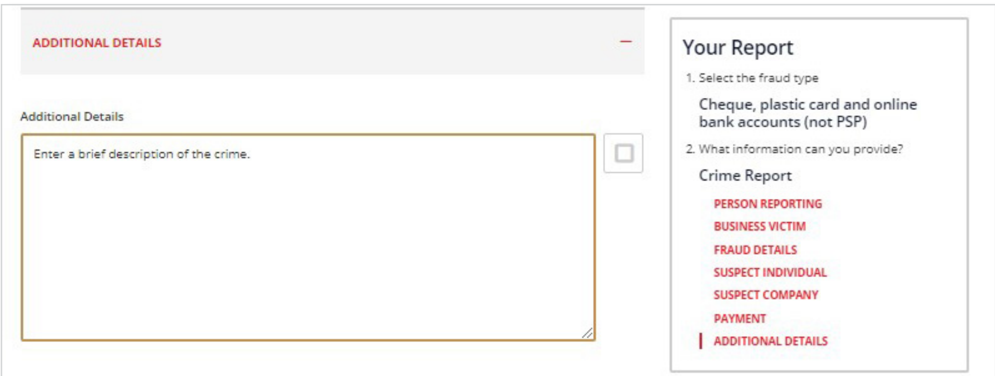


To add another payment, repeat the previous steps. There is no limit to the number of payments that can be added.

5.8 Additional Details

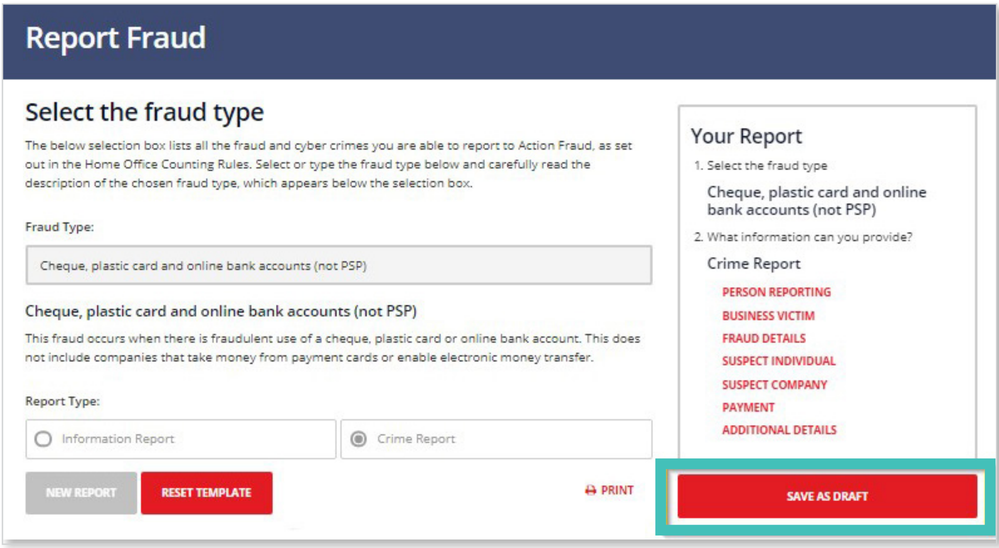
Enter a brief summary to describe what happened.

Maximum length 2000 characters



(vi) Save Report as Draft

If it is not possible to complete the report in one session, you can save your progress to complete later by clicking **'SAVE AS DRAFT'**

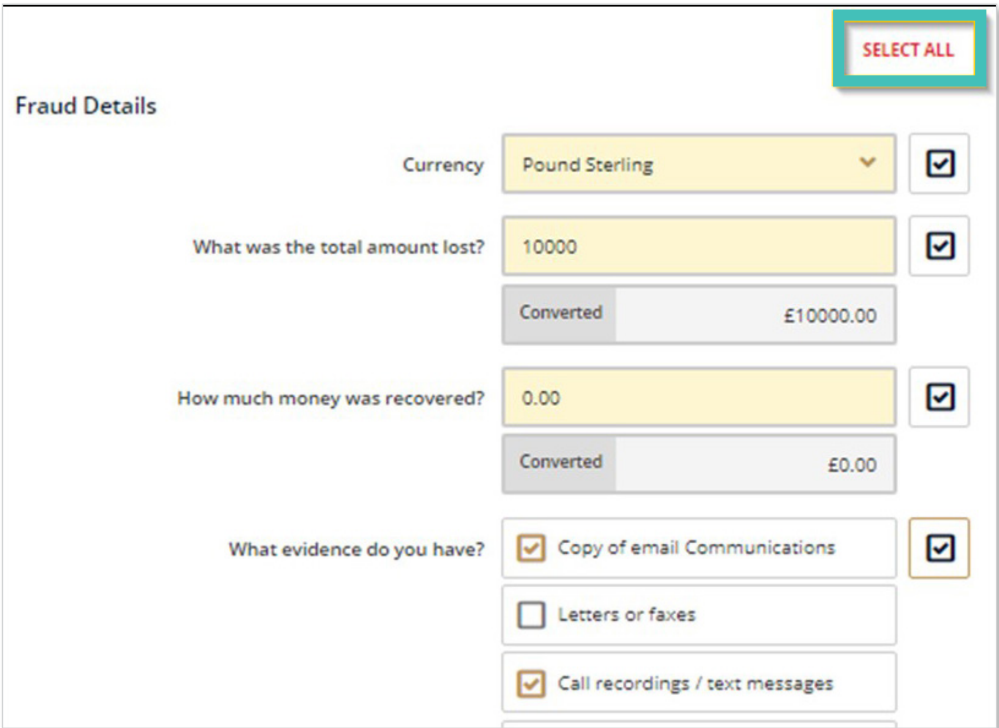


Once a report has been saved as a draft, it can be accessed from the Action Fraud dashboard. **See Section 9: View/Edit Reports**

(vii) Copy Data to a New Report

When submitting multiple reports, it is possible copy the data entered to the next new report. This functionality is available when submitting of the same crime type within the same login session.

To copy data, Check the box next to any field or click **SELECT ALL** to copy all fields within a section

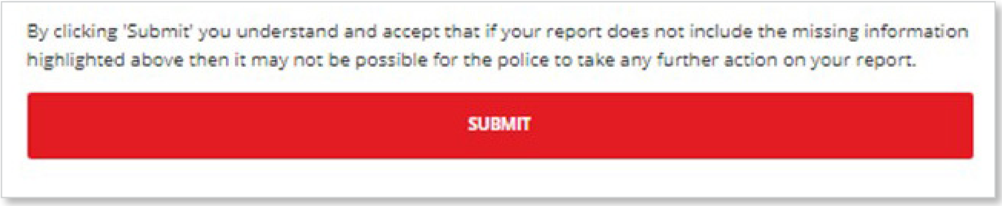


To copy a suspect or a payment, select the Checkbox:

When the report is submitted, you can choose to start a new report already populated with the copied data.

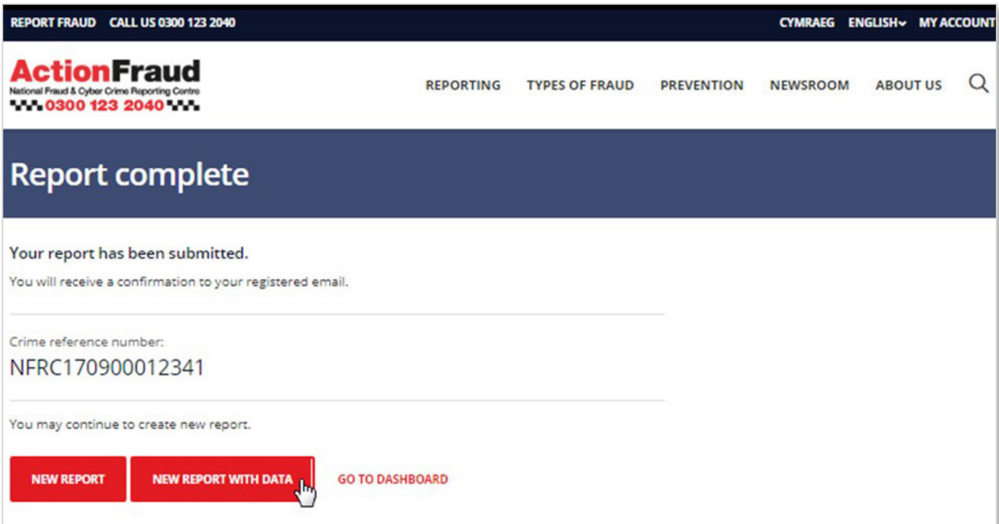
(viii) Submit Report

When the report is completed with all available information, click SUBMIT



When the report is submitted, an NFRC Reference number will be generated.

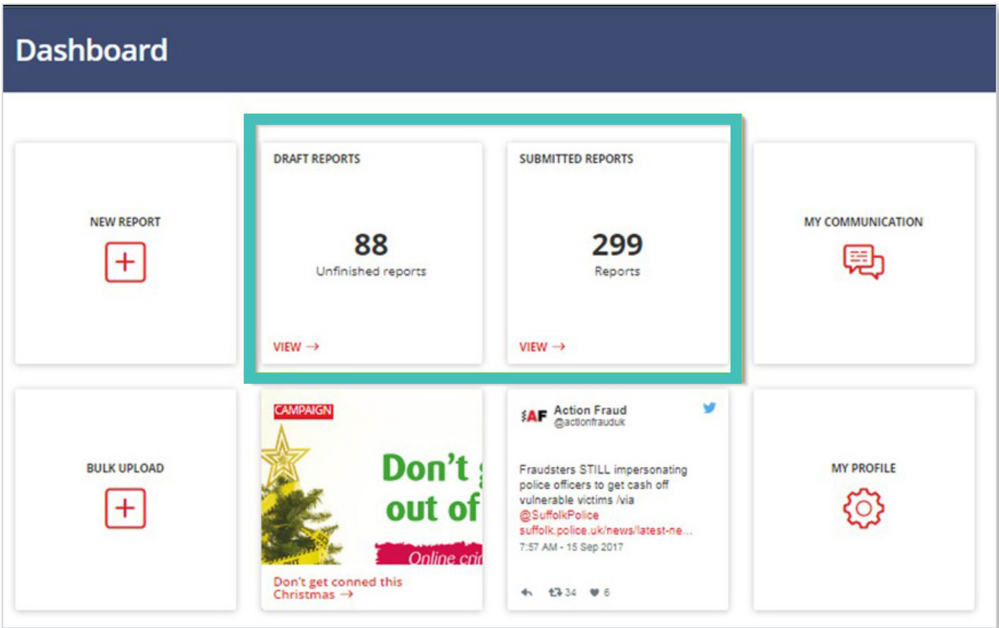
You will also receive a confirmation of the report to your registered email.



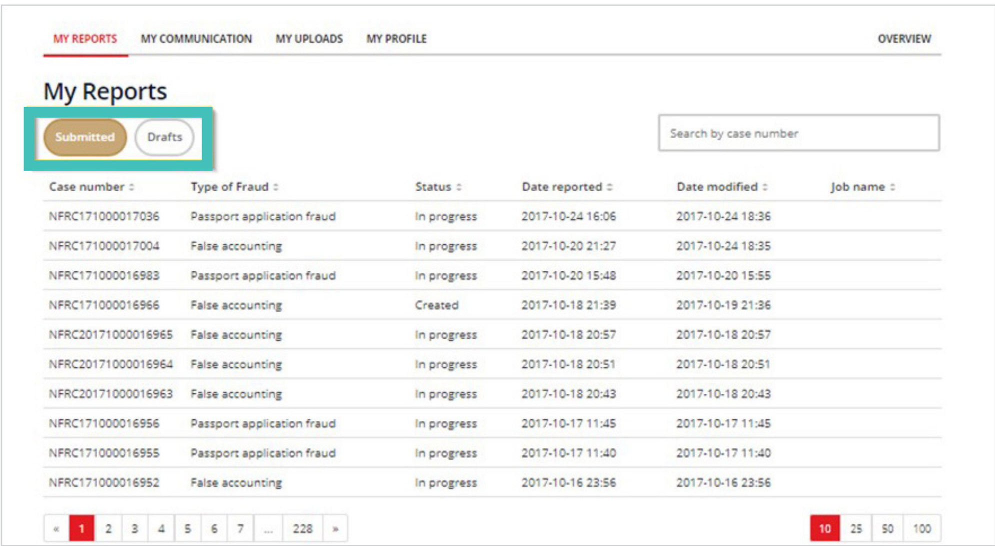
If you have selected data that you want to copy to the next report, click **NEW REPORT WITH DATA**

(ix) View/Edit Reports

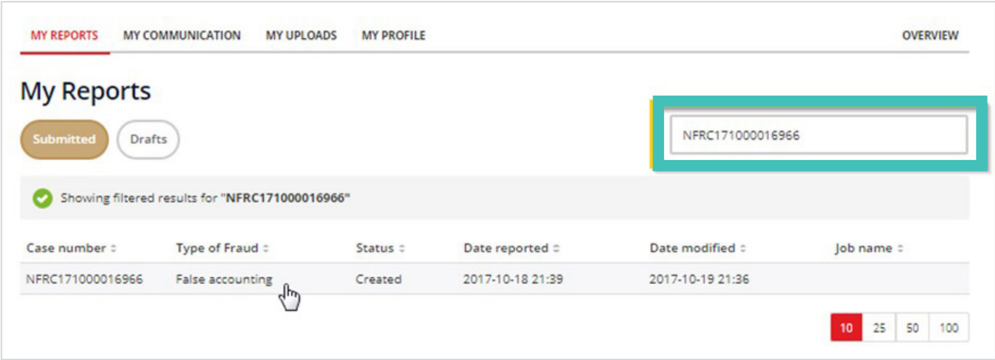
All draft and submitted reports are available to view and edit from the Action Fraud Dashboard.



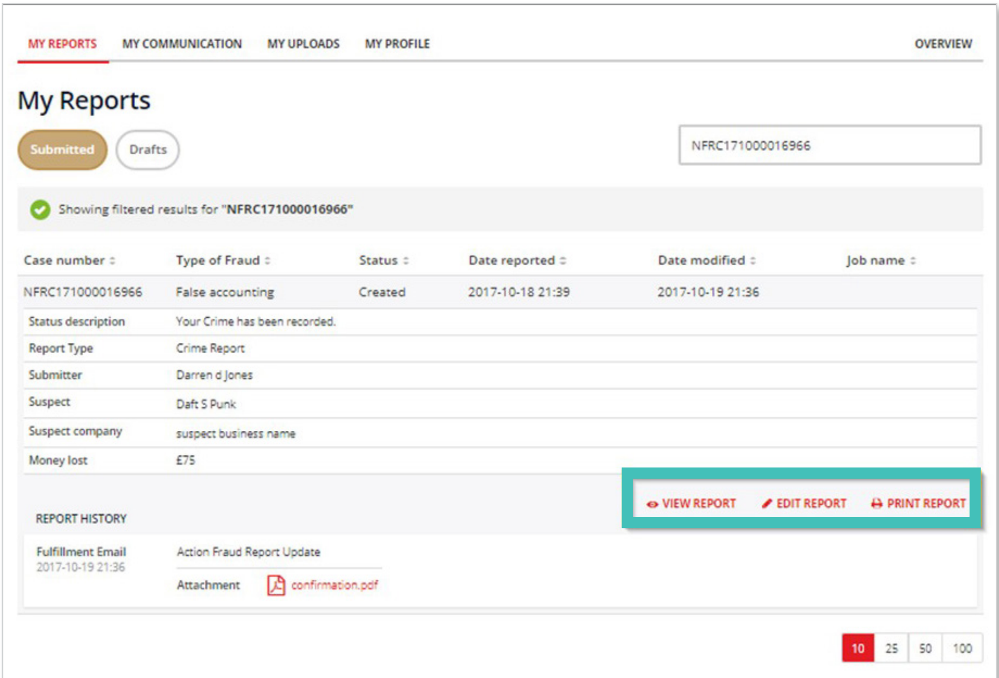
Selecting either the **DRAFT** or **SUBMITTED** reports tile will open the list of reports. Use the buttons at the top to toggle between the list of draft or submitted reports.



To search for a report, enter the NFRC Reference in the search box, and click on the report to open it



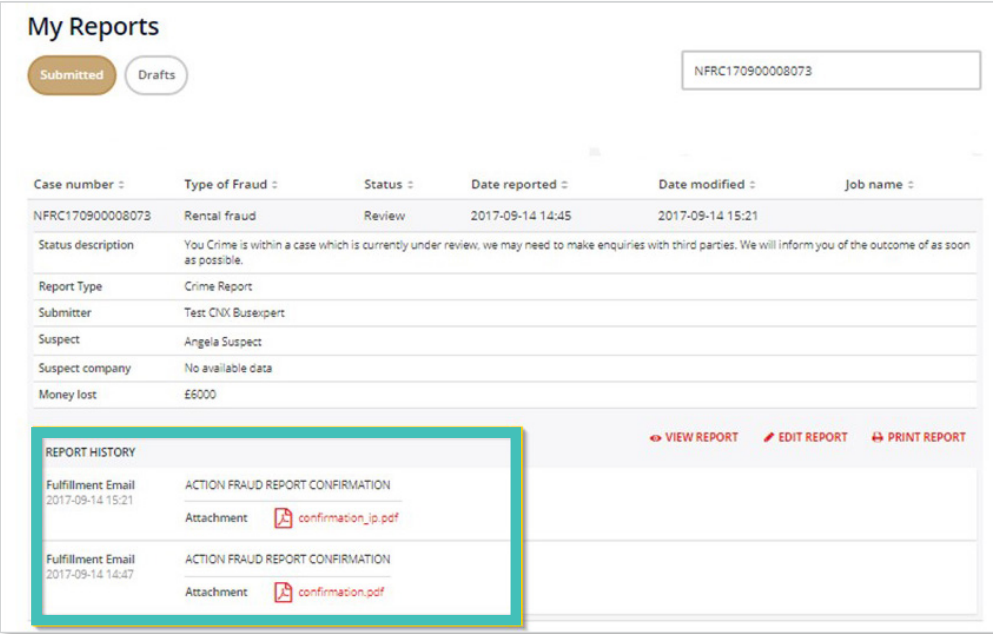
This will expand to display a general overview of the report details. To view, edit or print the report, click the relevant button on this screen



10. Track Report Status

You will be kept informed on the progress of the report. If the status of the report is updated, you will receive an email to your registered email address.

You can also track report status and view update communications from the Report History section



09 RESOURCE EIGHT:

Example Case Studies

Please note that the case studies are included to illustrate examples of concerns which can be identified when transfer requests are received and the decisions which trustees, administrators and providers can be asked to consider. The Code makes no judgment in terms of the appropriateness of the decisions made in these case studies.

Case study 1

The following is an example of a pension transfer request received by a leading pension provider. The provider, customer name, receiving scheme, trustee and administrator details have all been anonymised to protect the identities of the individuals concerned and to ensure full compliance with Data Protection obligations but all other information is factual. The case illustrates the challenges which trustees and administrators have when determining whether or not to make the transfer payment.

Summary of transfer request

- The transferring scheme is a Flexible Pension Plan with a leading pension provider.
- The customer, Mrs A, is 76 years old.
- The value of the plan is in excess of £125,000.
- The proposed transfer is to a Small Self-Administered Scheme (SSAS).
- The principal employer, XYZ Ltd, does not appear to be actively trading and does not have a valid website address.
- They (XYZ Ltd) are the Trustees and administrators of the SSAS.
- The scheme is registered with HMRC.
- Mrs A is a Director of XYZ Ltd but, from Companies House records, there are over 60 directors and Mrs A is not a signatory to the Trustee (XYZ Ltd) bank account.
- The company address provided is a residential address at which in excess of 30 other companies are registered.
- The previous registered address of XYZ Ltd was also the registered address of some 1,900 companies.
- Although a new adviser was appointed to the plan in 2015, Mrs A has not taken FCA regulated financial advice regarding the transfer.
- Mrs A and her husband have however said that they have spoken to Pension Wise (as of 1 January 2019, Pension Wise is delivered by the Money and Pensions Service but both will be rebranded as MoneyHelper from June 2021[8]).
- The rationale for the transfer is that Mrs A's son completed a similar transfer around one year previously.
- Mrs A's son found out about the scheme from a friend and has transferred his pension plan (which was not with the same provider) to the scheme.
- The customer's husband made the initial contact with Mr B of the Trustees of the scheme. Initially this was ABC Trustees Ltd but ABC Trustees Ltd were subsequently replaced as Trustees by XYZ Ltd. Mr B is a Director of both XYZ Ltd and ABC Trustees Ltd.
- Mr B is referred to in a previous and separate class action as having advised an individual to transfer to a scheme which was subsequently linked to pension scamming.
- Mrs A does not know how her transfer will be invested but "her husband is an accountant" and Mrs A has stated that "they are happy with their decision".

[8]https://maps.org.uk/moneyhelper/?cn-reloaded=1

- The charges are 1.55% set fee plus 0.55% per annum payable to XYZ Ltd. These are higher than the charges on the current plan.
- Evidence of regular earnings have been provided through a P60 and salary slips but not with the scheme employer (XYZ Ltd). As referenced in the Hughes v Royal London High Court judgment, a statutory right to transfer exists as there is no requirement that earnings must relate to the scheme employer.

Key concerns

1. The proposed transfer of benefits for someone of that age is a fundamental concern. The payment of benefits rather than the transferring of benefits would appear to be a more natural course of action to be requested.
2. Mrs A is proposing to transfer to a pension with higher charges.
3. There is no evidence of regulated financial advice having been provided.
4. It does not appear that Mrs A is in full control of the decision to request the transfer of her benefits.
5. The investments are entirely unclear and may well be unregulated, limiting any investor protection she will have.
6. The absence of any apparent trading activity from the scheme employer suggesting it has been established purely for collecting pension assets.
7. Mr B's previous links to pension scamming activity.
8. The scheme employer appears to be operating from a "virtual" address both now and previously.
9. The fact that Mrs A is not a signatory to the Trustee (XYZ Ltd) bank account highlights concerns on both the control and release of the funds.
10. Given Mrs A's age, the potential vulnerability of the customer is of concern.

Decision

- In view of the concerns of a potential scam and following the key concerns outlined, the provider decided not to proceed with the transfer despite the fact that a statutory right to transfer existed and accepted the risk of not making the transfer.

Actions taken

- The provider wrote to Mrs A outlining their decision not to transfer and the rationale for this decision.
- In addition, the provider wrote to The Pensions Regulator to inform them of the decision.
- The case was also reported to Action Fraud.

Case study 2

Many commentators cite the requirement for IFA advice on any transfer over £30,000 acts as a safeguard against pension scams. However, we have seen that bogus IFAs are a significant part of the problem. Such a case is set out below:

The case below is a first-hand experience of a member wishing to transfer out of a DB scheme. The destination scheme was discovered to be a pension scam and hence we were able to prevent the scam from taking place, protecting the member's savings of nearly £60,000.

The administration team received a completed set of paperwork from Mr N requesting that his savings be transferred out of the pension fund. A member of the administration team reviewed all of the paperwork in line with best practice and did not detect any signs of scam activity. In particular, as the transfer value was in excess of £30,000, evidence that Mr N had taken IFA advice was required, and this was duly included. The IFA paperwork had been signed by a registered IFA who appeared on the FCA's authorised list.

The case was then passed to a specialist team to discuss the transfer with the member. A short telephone call with Mr N was arranged and a series of simple questions were asked about the transfer circumstances. This call identified several key pieces of information about the transfer which led to confirmation that this was a pension scam:

1. When asked about the IFA, the member gave a different name to the IFA on the completed paperwork previously sent in. In fact this 'adviser' worked for a completely different company and the member had never heard of the IFA on the paperwork.

2. The member also confirmed that he had initially been approached by an "introducer" and forms had been completed for him by the introducer and the 'adviser'.

These two pieces of information immediately raised a "red flag" against the case and so the case was referred back to the administration team.

Armed with this additional information the administration team were able to find out that the 'adviser' who had actually given Mr N the advice was not authorised by the FCA to provide such advice, and hence by providing that advice had committed a criminal act.

Our compliance team made scam reports to the FCA and the NCA. From contact with the Police, we discovered that:

- The unauthorised 'adviser' had actually been arrested, along with all the members of the firm that he was working for.
- The original (FCA authorised) IFA who signed the paperwork was also under investigation. As the police investigation was still ongoing, his approval status had remained as authorised on the FCA website. He has since been added to our internal watch list as being linked to scam related activity.
- The introducer had also been arrested as part of the same investigation.
- The receiving scheme has been added to an internal 'watch list' as being connected to scam activity.

This case highlights the value of talking to members directly. Paper-based due diligence would not have revealed the discrepancy and the transfer would have proceeded. The member could have lost their entire pensions savings and potentially the transferring pension scheme could have faced a tax charge of up to 40% of the value of the transfer in respect of what would have turned out to be an unauthorised payment.

(With thanks to XPS Pensions Group)

Case study 3

Successful prosecution of scammers. Four people who ran a series of scam pension schemes have been ordered to pay back £13.7 million they took from their victims.

David Austin, Susan Dalton, Alan Barratt and Julian Hanson squandered the money after 245 members of the public were persuaded via cold-calling and similar techniques to transfer their pension savings into one of 11 scam schemes operated by Friendly Pensions Limited (FPL). Victims were told that if they transferred their pension pots to the schemes they would receive a tax-free payment commonly described as a “commission rebate” from investments made by the pension scheme – a form of pension scam. On 23 January the High Court ruled that Austin, Dalton, Barratt and Hanson should repay millions of pounds they took from the schemes over a two-year period.

How the scam worked
Between November 2012 and September 2014, 245 victims were cold-called or lured by a series of scam websites and persuaded to transfer their pension funds into one of 11 scam schemes. The victims were told their pensions would be reinvested and they would be paid an upfront cash lump sum for making the transfer. They were also lied to that their funds would be put into assets, bonds and HMRC-compliant investments to meet the target return of 5% growth a year.

False documents were used to trick staff at the ceding schemes – the schemes where the victims had their pensions – into believing that the pension holders worked for companies linked to the scam schemes. This meant the staff were persuaded to allow £13.7 million of funds to be transferred to the scam schemes.

David Austin installed Alan Barratt, Susan Dalton and Julian Hanson as the trustees for the scam schemes and they were then paid to act on his instructions, allowing the scheme monies to be used at Austin’s will. Mr Barratt and Mr Dalton also acted as salesmen for Mr Austin’s Spain-based business, Select Pension Investments, persuading victims to transfer their pension pots into the schemes. A small proportion of the funds – between 10% and 25% of the amounts transferred – were given back to the victims as their “rebate”, although many victims were assured that this payment was coming from the investment provider not out of their pension pots. More than £1 million was paid to “introducers” or “agents” who used cold-calling to encourage pension members to transfer over their funds.

More than £10.3 million was transferred to businesses owned or controlled by Mr Austin, including the current accounts of Friendly Pensions Limited and Friendly Investments Company Ltd. Mr Austin, a former bankrupt who had no experience of running an investment company, even used the bank accounts of his dead father-in-law and his elderly mother-in-law to move around hundreds of thousands of pounds. Mr Barratt was paid £382,208, Ms Dalton more than £168,000 and Mr Hanson £7,000. Mr Hanson’s scheme had become active only weeks before the scam was stopped. The High Court found that on the available evidence, Mr Austin and his family had derived at least £1.355 million of benefit from the scam.

Just £3.2 million of the funds was invested. Among the investments were £2 million in an off-plan hotel development in St Lucia called Freedom Bay and an unregulated commercial property bond. £120,000 went to a company registered to Mr Austin’s daughter, Camilla Austin, to fund her father’s legal costs in a separate case.

A whistle-blower contacted TPR about the scam in November 2014. TPR then appointed Dalriada as an Independent Trustee to take over the running of the schemes from Mr Barratt, Ms Dalton and Mr Hanson, to prevent further funds from being taken out of the schemes by the scammers.

Example A: The refusal of one man’s pension provider to agree to a transfer saved him from losing more than £50,000 to the scam
Donald was cold-called by Susan Dalton in February 2013 and told that if he transferred his pensions from two companies to her scheme he would get a guaranteed return of at least 5% a year, plus a 10% cash lump sum upfront.

But while one of his pension providers agreed to the transfer of his £17,000 pot, the other refused to transfer his £58,000 pot. Instead, ReAssure rejected a series of letters from companies linked to the scammers, saying it was not satisfied that the receiving scheme was a valid one. Eventually, the scammers gave up trying to persuade ReAssure to make the transfer.

When he reached 55 in 2015, Donald contacted Susan Dalton to ask to draw down 25% of his pension. But she claimed he had never transferred his pension and then ignored his calls and emails – prompting Donald to call Action Fraud.

Donald, from Hull, said: **"If ReAssure had allowed my pension to be transferred it would have been a disaster. I would have lost everything. I have had a very lucky escape.**

"My wife and I were council tenants, so Susan Dalton should have realised that we did not have lots of money and that our pensions were an important source of income to us. She totally misled me into transferring my pension and paid no regard for my financial well-being.

"She told me what I wanted to hear, and I believed it. Looking back now, everything was basically a lie or a betrayal. I was naive. I was conned by a professional con merchant."

Example B: A man who had given up work to care for his seriously ill partner and their three children had almost £50,000 taken from his pension pot by the scammers

Colin, from South Wales, had become the full-time carer for his partner when he was approached via text message.

He was offered up to 10% of his pension as a cash lump sum which the agent promised would not come out of Colin's fund. Instead he was told his pot would be invested in the construction of holiday complexes in St Lucia with good returns. He was tempted by the opportunity to spend some money on his children, redecorate their home and potentially go on holiday with the lump sum.

After hearing about pension scams in 2014, Colin tried to approach the scammers but could not get in touch with them. Dalriada, the Independent Trustee appointed by TPR, later broke the news to him that he had fallen victim to a scam.

Colin, 48, said: **"I should have known that it was too good to be true. I should have sought advice and asked more questions, but I didn't.**

"I had contributed towards my £50,000 pension pot, for which I had worked really hard, and now that has been taken from me.

"The loss of my pension will have a massive impact on my life. When my children finish school, I will be around retirement age. There will be no money to draw down when I turn 55 and no pension savings for later life.

"I was greedy. I feel stupid for throwing away my financial future for £4,200."

Example C: A couple lost both of their pensions after falling into the clutches of Alan Barratt John and Samantha, from Hereford, were persuaded in 2013 that if they transferred their funds to Barratt's pension scheme they would get better returns on their investments.

Their pension provider warned them that they believed the transfer could be pension liberation fraud, but Barratt convinced them to carry on, saying they would get a lump sum as commission for transferring their funds.

The couple then transferred a total of more than £78,000 – receiving £11,800 as their "commission". But while they had been assured the funds would be invested in low-risk investments, they were sent details of a truffle trees firm in the West Country. The couple were so concerned they contacted police. HMRC later contacted the couple to tell them the "commission" had come out of their pension – and handed them a tax bill of thousands of pounds.

John, 46, said: **"As a result of my dealings with Alan Barratt my final salary pension is in a scheme that I don't understand the status of but which I have been told is a scam.**

"As far as I know, the majority of my pension fund is invested in truffle trees, but I doubt whether that is legitimate. My partner appears to have lost her pension too.

"I deeply regret ever listening to Mr Barratt."

(With thanks to The Pensions Regulator)

Case study 4

The following is an example of an "international SIPP" pension transfer request received by a leading pension provider. Details of all parties have all been anonymised to protect the identities of the individuals concerned. The case illustrates the complexity and the challenges which providers, trustees and administrators face when determining whether or not to make a transfer payment where there is a statutory right to transfer.

Summary of transfer request

- The transferring scheme was a personal pension plan.
- The member (Mr A) was 50 years old and resident in the UK.
- The value of the plan was just over £6,500, although the member stated that he wished to consolidate five pension plans, with a combined value of £22,000.
- The proposed transfer was to an international Self Invested Personal Pension (SIPP) plan provided in the UK by an FCA regulated SIPP operator (referred to as "Blue" in the study).
- There was an overseas investment aspect.

Key concerns

The member was called "out of the blue" by Red Wealth Management, an Appointed Representative of the Yellow Partnership LLP (which was FCA regulated). Despite the connection to Red, Yellow did not feature at all in the transfer. Red, the introducer, informed Mr A that they were "too busy" to complete the pension review (despite having cold called him) and passed him off to another firm, Green Financial Services. The connection between the two firms was unclear.

Green Financial Services was regulated by the FCA, but the member had neither met nor spoken to an adviser at Green. He may have spoken to an administrator there. He had never heard of the adviser who was named on the membership certificate for the SIPP provider (Blue). Mr A believed that Red Wealth Management and Green Financial Services Limited were both FCA regulated.

The provider obtained Red Wealth Management's registered address from Companies House and the FCA Register). However, in a Letter of Authority signed by Mr A, Red's address was different. Throughout the transfer process, a number of different addresses emerged, raising further concerns.

The provider could not find any internet presence for Green, other than a static web page and a Facebook page advertising 'free pension reviews' and a 'free lost pensions tracking service', together with pet insurance and mortgage advice.

The member was unclear on what the investments would be, but he thought that advice on the investments may have come from the SIPP provider (Blue). (Blue was not authorised to give investment advice.) The proposed investments appeared to be unregulated and offshore through SLO Management, based in Slovenia. Mr A had no overseas connection. This overseas connection was of concern to the provider, as overseas investments are generally not regulated by the FCA or covered by the FSCS.

From the transfer documentation provided, the investments appeared to involve investing 25% of the fund into a "fixed income" fund paying a guaranteed 7% per annum. The remaining 75% of the fund was to be invested in a "flexible fund platform" where fees of 1.3% per month would be charged. The member was effectively locked into this fund platform for a period of 10 years, owing to an early exit penalty charge (initially 8% of the fund value). Mr A was also unclear about the fees being charged.

Decision

In this case, although the member had a statutory right to a Cash Equivalent Transfer Value, such were the number and significance of the concerns identified during the due diligence process, that the provider took the decision not to process the transfer request and to advise the member of the reasons for the refusal.

Case study 5

The following is an example of a transfer request to an "international SIPP" pension transfer request from an offshore personal pension plan. The case is included for interest and to help with non-UK residents and non-UK advisers. Details of all parties have all been anonymised to protect the identities of the individuals concerned. The case illustrates the challenges which trustees and administrators have when determining whether or not to make a transfer payment.

Summary of transfer request

- The existing pension provider is referred to as "ABC" in the study.
- The transferring scheme was an offshore approved personal pension plan.
- The member (Mrs B) was 48 years old and resident in the UAE.
- The value of the plan was over £100,000.
- The proposed transfer was to an international Self Invested Personal Pension (SIPP) plan provided in the UK by an FCA regulated SIPP operator (referred to as "XYZ" in the study).

Key concerns

The existing provider, ABC, was contacted by Mrs B's adviser, 123 Limited (123), based in Cyprus, requesting transfer out documentation and providing authority to act for Mrs B. ABC contacted Mrs B to confirm that 123 had her authority to act in this regard.

The transfer paperwork stated that the reason for transfer was the new plan was more cost effective. No copy advice was received from 123 detailing their position to Mrs B.

ABC contacted 123 to say that it would require a copy of their advice to Mrs B as part of their standard processes to consider a transfer. Subsequently, 123 contacted ABC by telephone requesting that, if ABC would not progress the transfer request without a copy of their advice to Mrs B, ABC should provide 123 with an advice letter template. This was refused and Mrs B was copied in.

The proposed receiving plan XYZ, contacted ABC again providing the signed transfer request paperwork asking that the transfer proceed without further delay. ABC informed them of the missing documentation, in particular the copy advice letter from 123 to Mrs B. Mrs B was copied in. XYZ confirmed they were aware the advice letter was outstanding. XYZ also emailed ABC asking for a template advice letter. Again the template was refused.

Investigations into 123 using web-based data did not provide clear evidence that 123 were regulated to provide pension transfer advice. Subsequent further investigations and calls with the local regulator provided that 123 was not licensed to provide advice on pension transfer business.

Mrs B was contacted by phone by ABC initially to ensure that 123 were authorised to act on her behalf and additionally to confirm her desire to transfer out of ABC. She was copied into exchanges with 123 and XYZ. She was frustrated by the delays in the transfer and felt the requirement by ABC to see an/the advice letter to her from 123 unacceptable. She formally complained to ABC about the delays in the transfer.

The provider considered Mrs B to be vulnerable, owing to her failure to have concerns that 123 were not regulated to provide advice on pension transfers and were not providing a copy of their advice.

Decision

ABC declined the transfer, acting on the best interests of the member, on the grounds the adviser was not regulated to provide pension transfer advice and failed to provide an advice letter which was required as part of ABC's standard processes dealing with transfer requests.

COMBATING PENSION SCAMS:

A Technical Guide

01 INTRODUCTION

In 2015, the Pensions Scams Industry Group (PSIG) developed a voluntary Code of Good Practice, written by a group of key stakeholders, including trustees, administrators, legal advisers and insurers. This Code set out suggested steps to help identify whether requested transfers should be paid.

The Code itself is not a statutory code, nor does it seek to override guidance issued by regulatory bodies. Rather the Code of Good Practice is voluntary and seeks to set a best practice industry standard to help identify transfer requests that may be fraudulent or a scam. The Code is based on three guiding principles:

1. Transferring schemes should raise awareness of pension scams for members and beneficiaries of their scheme.
2. Transferring schemes should have robust, proportionate and both regulatory and legislatively compliant processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk.
3. Transferring schemes should generally be aware of the known current strategies of the perpetrators of pension scams in order to inform the due diligence they need to undertake and should refer to the warning flags as indicated in TPR (The Pensions Regulator) Guidance, FCA alerts and by Action Fraud.

This Technical Guide forms part of the Pensions Scams Industry Group (PSIG) Code of Good Practice and details the technical context and rationale to the Code. The Technical Guide should be read as part of the full Code of Good Practice and readers should refer to the other Code documents as required.

02 PRINCIPLES OF THE CODE

Principle 1: Transferring schemes should raise awareness of pension scams for members and beneficiaries of their scheme.

- Scheme members should be made aware of the risks of pension scams. Awareness material, in particular the Regulators' ScamSmart guidance, should be provided in information documents, transfer packs, retirement packs and statements, as well as on websites.
- This material should be sent to scheme members directly, rather than through their advisers. A good way to develop member understanding further is to contact them by telephone directly as part of the due diligence process.
- Please refer to Section 2.1 Communicating the risks of scams to the Member in the Practitioners Guide for further detail.
- Administration staff should be made aware of the risk of pension scams. Staff who deal with scheme members should be made aware of the guidance materials to help them to identify potential pension scams. Staff who undertake detailed due diligence on pension transfers should have an understanding of the Code of Good Practice.
- Where relevant, employers should be made aware of the risk of pension scams.

Principle 2: Trustees, providers and administrators should have robust, proportionate and both regulatory and legislatively compliant processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk

- In dealing with a transfer[1] request, transferring schemes should conduct due diligence on the receiving scheme. Where they suspect that the receiving scheme may be involved in a scam, transferring schemes should carefully consider whether the transfer should proceed.
- Appropriate due diligence will vary for different types of pension schemes. In carrying out due diligence, the transferring scheme should aim to collect information over the following areas where applicable:
  - Receiving scheme type.
  - Date of establishment.
  - Legal status of the receiving scheme and any administrators or operators.
  - Location of the receiving scheme and any administrators or operators in relation to the scheme member.
  - Any employment link between the receiving scheme and the scheme member.
  - Marketing methods; for example, ask scheme members to confirm how they became aware of the scheme to which they intend to transfer and establish if they have been contacted by an introducer or company through cold calling, unsolicited text messages or emails, or by being approached directly outside of their place of work, a common method known as "factory-gating".
  - Investment choice; for example, ask scheme members to confirm where the money is to be invested and the investment vehicle being used.
  - Provenance of receiving scheme; the FCA, HMRC, National Crime Agency and Companies House all provide information of possible assistance in checking the provenance of the scheme.
  - Where advice is required, check who the advice is coming from (for some transfers, there can be two advisers, one that has permissions to advise on pension transfers and the other adviser recommending the product and investments where the money is to be invested).

[1]Including pension transfers which are not within the FCA definition of 'Pension Transfer', e.g. because they do not include the transfer of safeguarded benefits.

- It should also be checked that the entity has not been 'cloned'.

- Transferring schemes should also consider Pension Scams Industry Forum (PSIF) Membership. PSIF operates under PSIG governance to share knowledge within its members of schemes, entities and individuals of concern in terms of pension scamming. PSIF membership has also been encouraged by the Minister for Pensions & Financial Inclusion as outlined in his Foreword to the Code and in his letter to around 90 large schemes[2]. It should be noted however that PSIF membership does not confer any bona fide status on a receiving scheme.
- On 5th June 2020, the FCA published its final rules and guidance on pension transfer advice[3] and these included a ban on contingent charging (where the member only pays when a transfer or pension conversion proceeds, except in certain limited circumstances) as well as measures to:
    - require firms to consider an available workplace pension scheme as a receiving scheme for a transfer;
    - enable firms to give a short form of advice (abridged advice);
    - empower members to make better decisions by improving how advisers disclose charges and requiring checks on consumers' understanding during the advice process; and
    - enable advisers to give better quality advice and improve professionalism by introducing specific continuing professional development on pension transfer advice.
- The FCA also published step by step guidance on what a member should expect when taking advice in connection with transferring out of a defined benefit (DB) scheme or scheme which provides "safeguarded benefits" and into a defined contribution (DC) scheme[4]. The FCA has also issued a consultation on guidance on advising on transfers[5].
    - "Safeguarded benefits" offer additional security and often valuable guarantees that are lost if the member transfers or converts those benefits to flexible benefits. In addition to DB schemes, they also include pension savings with the option to purchase an annuity at a guaranteed rate as well as specific guaranteed growth rates which may be available on some funds (e.g. With Profits funds). The FCA "…expect a firm advising on a pension transfer from a DB scheme or other scheme with safeguarded benefits to consider the assets in which the client's funds will be invested as well as the specific receiving scheme. It is the responsibility of the firm advising on the transfer to take into account the characteristics of these assets."
- The FCA has acknowledged that "non-UK residents considering a pension transfer are likely to need to seek advice from both an overseas adviser for investment advice and a UK adviser for advice on the proposed transfer. In order to advise on the merits of the proposed transfer, the UK adviser should take into account the specific receiving scheme, including:
    - the likely expected returns of the assets in which their client's funds will be invested
    - the associated risks, and
    - all costs and charges that would be borne by their client.

This means liaising with the overseas adviser where necessary."

- The FCA is also "very concerned at the increase (we) have seen in cases in which the introducer has an inappropriate influence on how the authorised firm carries out its business, in particular where the introducer influences the final investment choice."[6]

[2]https://www.gov.uk/government/news/minister-calls-for-schemes-scam-support
[3]https://www.fca.org.uk/publications/policy-statements/ps20-6-pension-transfer-advice-feedback-cp-19-25-final-rules
[4]https://www.fca.org.uk/consumers/pension-transfer/advice-what-expect
[5]https://www.fca.org.uk/publications/guidance-consultations/gc20-1-advising-pension-transfers
[6]https://www.fca.org.uk/news/news-stories/investment-advisers-responsibilities-accepting-business-unauthorised-introducers-lead-generators

- The FCA have also expressed concerns that where the authorised firm delegates regulated activities, for example by outsourcing their advice process to unauthorised entities or to other authorised firms, that these companies either do not have the relevant permissions or are not their appointed representatives.

Please also refer to the FCA passporting guidance[7]. Additional information is contained in Section 3.1.2 of the Practitioner Guide.

- In most cases, an early telephone call from the trustee, provider or administrator to the member directly will help identify the reasons for the transfer request and the source and circumstances of the request, which in turn should help to identify cases where further due diligence is needed and the lines of enquiry to take. To be clear, this is NOT giving financial advice, nor is it a cold call – it is a due diligence step. The representatives making such calls should be clear about the nature and purpose of the call, as members are often groomed by scammers to view a call from the existing scheme as an unreasonable attempt to thwart their desire to transfer. The call process could help reduce due diligence costs and the personal touch can help the member think more clearly about the risks, as is evidenced by the number of members who do change their minds about the specific transfer. Please refer to the excellent Police Foundation report[8] which PSIG helped to develop in this regard.
- The following factors should be considered, in an assessment of a receiving scheme:
  - Risk of scam: Is there a material risk that the member's pension savings could be lost by a pension scam if a transfer payment is made?
  - Risk of making an unauthorised payment: Is there a material risk that the receiving scheme could make an unauthorised payment? Note that the existence of an unauthorised payment or other adverse tax consequences does not mean that a transfer is automatically invalid or that the proposed transfer is a pension scam.
  - Risk of not complying with the statutory deadline: Consider the timescales for complying with the transfer request (and whether you can request an extension from TPR).
- Where there is no material pension scam risk, the transfer should be processed quickly and efficiently.
- Where there is a material pension scam risk, whether or not the member has a statutory transfer right, further transfer details should be checked. This may involve taking legal advice.
- If the member does have a statutory transfer right, you will need to decide whether to proceed with the transfer despite the risk of a scam. This involves assessing the risks of either blocking or allowing the transfer. Again, this may involve taking legal advice. Please see Section 4.2 Determination in the Practitioners Guide for further information.
- If you decide that the transfer should be refused, you should explain why to the member. If the member insists on transferring, trustees, providers or administrators should ensure that the member discharge forms are suitably robust to reduce risk (although note that such discharge forms may not eliminate the risk to trustees and providers of the member or the member's beneficiaries bringing a subsequent claim – Please see Section 7 of the Practitioners Guide for more information).
- Due diligence is not likely to be necessary if the receiving scheme has been vetted previously and is recorded on an internal list of schemes that do not present a pension scam risk (see Internal 'clean list' approach in Section 3.1.1. Initial Analysis – Stage One of the Practitioner Guide). However, what appears to be a vetted scheme may have been cloned or be using falsified paperwork, so details need to be carefully checked.
- Transferring schemes should use their own judgment, take appropriate advice if necessary, and record their decisions.

[7] https://www.fca.org.uk/firms/passporting
[8] http://www.police-foundation.org.uk/publication/protecting-peoples-pensions-understanding-and-preventing-scams/

Principle 3: Transferring schemes should generally be aware of the known current strategies of the perpetrators of pension scams in order to determine the due diligence they need to undertake and they should refer to the warning flags as indicated in TPR Guidance, FCA alerts and by Action Fraud.

These strategies continue to evolve, but examples at the time of publishing include:

- Pension scams may use documents that look like legitimate scheme documents. Pension scams will typically use scheme documents that have been taken from legitimate schemes. Although these may look appropriate, the scheme may have no intention of following them. Sometimes clues appear in spelling errors in such documents.
- Pension scams will mimic the normal transfer process. Scheme members may appear to have completed and signed the transfer document; however, they may not have actually seen or signed any application form or other document, or be aware that their signature has been used on transfer authorisation paperwork. Machine drawn signatures could well indicate scam activity.
- Those intending to operate pension scams will typically make first contact with scheme members via cold calling, unsolicited text messages or emails and this could still occur notwithstanding the implementation of the cold calling ban. A strong first signal of this would be a letter of authority requesting a company not authorised by the FCA to obtain the required pension information; e.g. a transfer value, etc. There is also a need to be wary of forms which appear to emanate from an FCA authorised source, but where the address is different, and may well be that of an unregulated third party.
- Fewer scams take the form of traditional pension liberation (taking benefits before normal minimum pension age or any protected early pension age) and are more likely to involve investment schemes (sometimes post retirement), SIPPs, SSAS and QROPS.
- Scammers have also developed their approaches, using social media (e.g. Facebook and LinkedIn) to target victims, as well as by "factory-gating" (i.e. approaching people outside their workplace) to contact those likely to have access to significant pension savings. Online promotions utilising search engines such as Google and Bing can also feature offers of free pension reviews and promises of unrealistic or guaranteed investment returns.
- Scheme members may be coached by those attempting to scam them to answer basic due diligence questions posed by transferring schemes.
- Schemes established for pension scams might mimic or clone legitimate scheme names. In particular, this is an issue for QROPS. Make sure that the scheme name matches that shown in the QROPS list, as maintained by HMRC, but also that other details such as the address are correct.
- TPR has also warned that organised crime groups led by married couples or families are running scams worth millions of pounds. In some cases the families have hired rogue financial experts with specialist pension knowledge, including accountants, advisers and trustees, to run the large-scale scams for them. Without these professional enablers, the frauds would not be successful.
- In addition, it has been noted that there has been an increase in the use of discretionary portfolios for pension scams, and in wealth managers making unsuitable investments in high risk and high charging assets for their customers. These have featured share trading accounts in which trading activity generates substantial commissions for the trader, to the clear detriment of the member. Alternatively, the scams may take the form of investments in more conventional funds but within an unnecessarily complex structure usually featuring the purchase of structured notes or investment bonds which hides a myriad of fees and charges. This "fractional scamming" or "skimming" sees multiple entities taking a cut and the value of the underlying investments can be destroyed. Some of these arrangements also feature exit penalties should the member wish to access or transfer the investments within a stated period of time (for example within 5 or 10 years).

- The FCA has recently initiated a review of SIPP providers following specific concerns regarding overseas advisory firms advising expatriates to transfer or switch their UK pensions into an international self-invested personal pension (SIPP)[9]. Overseas advisory firms often invest consumers' pension funds through an offshore investment bond within an international SIPP. The FCA is concerned that consumers who invest in this way may be exposed to high and/or unnecessary charges. They have also expressed their concern that the tax benefits of investing through an offshore investment bond are largely redundant to someone investing in a UK personal pension scheme.
- These "international SIPPs" are not legally defined as such but regularly deal with non-UK resident members (ex-pats) but many of these SIPPs are also sold to UK residents. Members seeking such transfers are frequently from the same jurisdictions popular with QROPS; for example, Europe, Middle East and South East Asia with the transfer being facilitated through intermediaries and advisers outside the UK and its regulation.
- It is very difficult for a ceding scheme to understand how pension transfer advice can be effectively provided when the adviser is based in a different country to the customer. Even if due diligence checks identify concerns, the overriding challenge for transferring schemes is the fact that, as the transfer is to a UK SIPP, a statutory transfer right is likely to exist.
- In their submission to the Work & Pensions Committee Pension Scams Inquiry[10], the FCA has also highlighted that scam typologies continually evolve and that they have now seen three generations of scams:
  - "First-generation scams offered unregulated physical assets – such as commercial property – for direct investment.
  - Second-generation scams obscured those underlying unregulated physical assets by creating a special purpose vehicle (SPV) to acquire them using funding raised by the issue of corporate bonds.
  - Third-generation scams often use the services of a wealth manager to create an investment portfolio that does not require the direct input of the investor; this portfolio then invests in SPV bonds and also that:
  - A more recent development has seen advice firms establish links with wealth managers through shareholdings and common directorships, or seek their own investment management permission thus enabling the set-up of their own investment portfolios. Advice firms advise clients to invest in the portfolios managed by linked wealth managers, or their own portfolios. There may also be links to the issuers of underlying investments housed within the portfolios. The conflicts of interest inherent in this model are often not disclosed to consumers, or otherwise managed."
- Perpetrators of pension scams are likely to apply pressure to force a transfer through. This may include encouraging direct member complaints, or through other channels such as a local MP, or the perpetrators themselves making that contact. These should be dealt with in accordance with the scheme's normal process.
- These transfers are also often subject to high ongoing charges and/or layering of fees and members are often unaware of the negative effect of these fees. The FCA's consultation on pension transfer advice and contingent charging[11] highlights that "Typically, ongoing adviser charges range from 0.5% to 1% of a transferred pot. From the Financial Advice Market Review Baseline report, we know that the typical level of ongoing advice charges on amounts exceeding £200,000 is 0.66%. From our DB4 data collection, we also know that 36% of consumers who transferred invested in a solution costing more than 1.5% each year."
- A concerning trend for international SIPPs (and other transfers) is where an adviser always transfers customers' pensions to the same SIPP irrespective of the customer's profile, size of pension fund or investment history. The funds also end up in the same investment fund. Many of these funds are provided via "investment platforms" which may be either UK based or offshore.

[9]https://www.fca.org.uk/news/news-stories/transferring-switching-uk-pensions-international-self-invested-personal-pensions
[10]https://committees.parliament.uk/writtenevidence/11389/default/
[11]https://www.fca.org.uk/publication/consultation/cp19-25.pdf

- The operators of some SIPPs are going into liquidation because of financial claims against them and the position for any individual redress is uncertain.
- Scams have also broadened to include “secondary scamming", where someone who has been scammed is approached by a third party, often a claims management company, which, for a fee, offers to attempt to recover the lost money. They may attempt to attach blame to the ceding scheme for failing to carry out sufficient due diligence before paying the transfer. When they fail to recover monies the individual is even further out of pocket.
- Further information on pension scams can be found on the TPR and FCA websites.

03 BACKGROUND

3.1 What is a pension scam?

In August 2017[12] HM Treasury defined a pension scam as;

"The marketing of products and arrangements and successful or unsuccessful attempts by a party (the "scammer") to:

- release funds from an HMRC-registered pension scheme, often resulting in a tax charge that is not anticipated by the member.
- persuade individuals over the normal minimum pension age to flexibly access their pension savings in order to invest in inappropriate investments.
- persuade individuals to transfer their pension savings in order to invest in inappropriate investments.

where the scammer has misled the individual about the nature of, or risks attached to, the purported investment(s), or their appropriateness for that individual investor."

[12]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf

3.2 A summary of a scam

We show below a table of types of scams, courtesy of PLSA's response to the Work & Pensions Committee Pension Scams Inquiry[13].

TYPE OF SCAM AND DESCRIPTOR
Pension Liberation: Prior to pension freedoms, scammers devised vehicles for people to access their pensions early by promising them access to some of their money if they were to transfer. With pension freedoms there has been some of this operating for those under 55 but not on the same scale.
Small Self-administered scheme (SSAS) pension scam: A company is set up in the saver's name and is used as the employer/SSAS sponsor. The SSAS offers loans back to the saver prior to age 55. The SSAS includes pension scammers as trustees, the money is often not even invested just channelled straight to the pension scammers in a classic Ponzi scheme.
Investment scam in SIPP/QROPS: Two versions of this. Sometimes the SIPP and QROPS are run by the scammers. Other times the vehicle is legitimate and it is only the investment that is the scam. The investment is illiquid as far as the legitimate vehicle is concerned but again it is a Ponzi scheme and the saver is left paying for administration charges of the vehicle even after it is clear they have been scammed with the original investment going insolvent. Unfortunately there are cases of legitimate high risk investments being invested in by savers which are not scams, so it may be hard for the pension provider to differentiate.
Claims management companies: The scammers re-appear claiming that the investment legitimately went insolvent but the saver is due compensation and that they can claim it for the saver. This often involves phoenixing of firms or at least advisers.
Misselling/DB Pension Transfer: This is within the regulatory ecosphere of pension advice. Half of pension transfer advice was considered unsuitable by the FCA and a ban on contingent charging in October will help to stop some of the perverse incentives that exist. There will however continue to be unscrupulous individuals who will advise unsuitable pension transfers for their own profit. The free chicken in a basket/ free pension review for British Steel Pension Scheme members is evidence of this.
Online fraud: pension and investment scammers are increasingly using the internet to offer free pension transfer advice. They buy commonly used search terms to do so. Unfortunately some regulated firms also do this, buying search terms of MaPS, Citizens Advice, of big pension schemes, and of advice directories.

[13]https://committees.parliament.uk/writtenevidence/11838/default/

3.3 Scale of the issue

The following is an extract from the TPR's written submission to the Work & Pensions Committee's Pension Scams Inquiry[14].

"A key challenge in understanding the extent of the problem is the lack of comprehensive data. Over the last decade many hundreds of savers have reported losing their retirement to scammers, with £30m reported lost to Action Fraud over the last three years. The true extent is likely to be significantly higher due to under-reporting by both individuals and the pensions sector. Victims may not report for a number of reasons (e.g. failing to spot the signs and not knowing how much is in their pension; the unsuitable nature of a 'long-term' investment not coming to light for years; feeling embarrassed to report that they've been scammed; or simply not knowing where to report it.) There is no requirement for the pensions industry to report suspected scams. A recent scams report from Police Foundation[15], based on data from before the COVID-19 crisis, estimates that £2.5tn of £6.1tn of pension wealth in the UK was "accessible" to scammers because the consumer could move their benefits. Using data supplied by pension companies, the Police Foundation found that, from a relatively small sample of 13 providers, £54m of pension wealth was suspected to have been targeted by scammers in 2019. Of that, potentially £31m was lost. Nearly two-thirds of customers, or 62 per cent, went on to transfer their pension even when warned of the risks, the report found."

3.4 Member transfer rights

In certain circumstances, members have the right to transfer their benefits from their current scheme:

- where the relevant legal requirements are met, and the member exercises their transfer right, the transferring scheme has a statutory obligation to make the transfer within six months of the application (or guarantee date in the case of a DB scheme); and.
- the transferring scheme rules may also give the member a right to transfer out even where a member does not have a statutory transfer right.

If the member applies for a statement of entitlement, and has a statutory transfer right, the statement must carry a guarantee date not later than three months from the date of the member's application[16].

Where a member requests a transfer, the trustees/providers must determine whether the member has a transfer right. This will involve checking:

- whether the member has a statutory transfer right. This will involve assessing whether the transfer meets the necessary legal requirements. Please note however that whether a transfer right exists is only relevant if there are concerns regarding the transfer. For drawdown to drawdown transfers; it should be noted that there is no statutory transfer right.
- whether there is a transfer right under the transferring scheme rules; and
- whether the transfer right is at the discretion of the trustees/scheme administrator or is subject to any other conditions, such as the payment not being an unauthorised payment (which in turn will need to be assessed). Where the right is discretionary, those holding the discretion will need to consider whether it is appropriate to agree to the transfer request and, in doing so, exercise the discretion reasonably.

These are complex legal questions which may involve a detailed analysis of the transferring and receiving scheme's governing documents.

TPR provide guidance[17] on statutory transfers of DB pension rights.

[14] https://committees.parliament.uk/writtenevidence/12113/default/
[15] http://www.police-foundation.org.uk/publication/protecting-peoples-pensions-understanding-and-preventing-scams/
[16] Regulation 6, SI 1996/1847, The Occupational Pension Schemes (Transfer Values) Regulations 1996
[17] https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/db-to-dc-transfers-and-conversions

3.5 Pre-Retirement Scam Warnings

Many scams are perpetrated on funds legitimately withdrawn from pensions as referenced by the second aspect of the definition of a pension scam in Section 3.1, namely to "persuade individuals over the normal minimum pension age to flexibly access their pension savings in order to invest in inappropriate investments."

Transferring schemes should do whatever they can to make members aware of the risks of unscrupulous advisers or introducers who may persuade them to invest their encashed scheme savings into inappropriate investment schemes. Please see Section 2 of the Practitioners Guide for full details on how to do this. This includes encouraging members taking cash from pension schemes to call TPAS or Pensionwise, part of the Money and Pensions Service (but both will be rebranded as MoneyHelper from June 2021[18]), for free, impartial guidance on scams risks.

3.6 Freedom and Choice in Pensions

From 6 April 2015, greater freedom and choice became available to members of DC pension schemes. With such freedoms come the risks of poor choices and that scammers will target people with access to those freedoms. They may deliberately try to collect information about scheme members approaching retirement age. They may also specifically target DB scheme members who cannot take advantage of the new flexibilities within their existing DB arrangements. This is particularly prevalent where there is a DB scheme in financial distress, as witnessed by the British Steel case. The due diligence set out in the Practitioners Guide applies to transfer payments, but practitioners should also be vigilant where pension benefits are being paid as cash.

[18]https://maps.org.uk/moneyhelper/?cn-reloaded=1

04 THE REGULATORY FRAMEWORK

4.1 The Pensions Regulator (TPR)

TPR is the UK regulator of work-based pension schemes. It has published[19] detailed information on pension scams and expects trustees and providers to use TPR materials to make members aware of pension scams. The information on TPR's website is regularly updated and includes a trustee checklist to help trustees to work through transfer request due diligence.

TPR must be notified where a statutory transfer from an occupational scheme is not made within the relevant statutory timescales. The TPR has powers to take action, including ability to issue civil penalties in certain circumstances.

TPR cannot predetermine any future regulatory action it may take but where the trustees of the transferring scheme can provide evidence that member funds may be at risk, this would be considered when deciding whether to take action for the non-payment of a transfer.

TPR is not able to waive a trustee's legal duty to carry out a transfer within the statutory deadline where the legislative requirements or requirements under the scheme rules are met. TPR expects the majority of transfer requests will be completed within the statutory deadline.

If the trustees of a transferring occupational pension scheme need more time for due diligence and they meet the extension criteria, then they may apply to TPR for an extension to the normal six-month time period[20]. Circumstances where an extension may be granted include:

- the member has not taken all steps they need to take for the trustees to carry out the transfer; and
- the trustees have not been provided with such information as they reasonably require to properly carry out what the member requires.

The application for the extension must be made within the six-month time period. It should identify the grounds for the extension request, indicate the additional time required and the reasons why the transfer cannot be completed on time.

Where trustees suspect a pension scam, they should consider making such an application as soon as due diligence raises concerns and they consider that the criteria to request an extension are met. Please see Section 3.4.2 Extensions in the Practitioner Guide.

[19]https://www.thepensionsregulator.gov.uk/pension-scams
[20]DB to DC transfers and conversions | The Pensions Regulator

4.2 The FCA

The FCA regulates all operators of individual personal pensions, including SIPPs and stakeholder pensions, as well as all regulated financial advice and UK based advisers giving investment and transfer advice. The FCA leads on the regulation of workplace personal pensions, such as Group Personal Pensions and Group SIPPs, with TPR leading on occupational pensions.

The FCA has the overarching strategic objective of ensuring the relevant markets function well, supported by three operational objectives:

- to secure an appropriate degree of protection for consumers
- to protect and enhance the integrity of the UK financial system, and
- to promote effective competition in the interests of consumers.

The FCA seeks to ensure that firms provide consumers with appropriate products and services. The FCA is the conduct regulator for nearly 60,000 financial services firms in the UK[21] including firms and individuals working in the pensions market, such as insurance firms, independent financial advisers (IFAs) and SIPP operators.

To reduce harm from financial crime, the FCA seeks to ensure that firms:

- take appropriate steps to protect themselves against fraud
- put in place systems and controls to mitigate financial crime risk effectively
- can detect and prevent money laundering, and
- do not use corrupt or unethical methods.

The FCA can take action against firms and individuals involved in scams in the sectors and markets that it regulates. This can include enforcement action against firms and individuals and restricting or imposing requirements on firms' business. The FCA's enforcement action makes it clear that there are real and meaningful consequences for firms or individuals that do not follow the rules.

The FCA provides information on pension scams[22].

4.3 HMRC

Where a pension scheme meets certain conditions, it can be registered by HMRC.

HMRC's registration process has been changed to deter pension scams:

- HMRC carries out a risk assessment before deciding whether to register a pension scheme.
- HMRC requires that the main purpose of a registered pension scheme should be to provide authorised pension benefits.
- HMRC can de-register a scheme where it has reason to believe it is involved in pension scams or if the pension scheme administrator is not fit and proper.

A transferring scheme can also ask HMRC to confirm the registration status of the receiving scheme. HMRC can do so without the consent of the receiving scheme. Please see Section 3.2.1 HMRC requests in the Practitioner Guide for further information.

Tax legislation specifies the payments which registered pension scheme can make without incurring an unauthorised payments tax charge. A transfer of a member's pension benefits will be an unauthorised payment if it is not a recognised transfer. To be a recognised transfer, various conditions need to be met, including that the receiving scheme is a registered pension scheme or a QROPS.

[21] https://www.fca.org.uk/publication/business-plans/business-plan-2020-21.pdf
[22] https://www.fca.org.uk/scamsmart/how-avoid-pension-scams

It is not just non-recognised transfers that result in unauthorised payments. Many of the payments made by schemes involved in pension scam activity, such as pension payments before normal minimum pension age, will be unauthorised.

Unauthorised payments could result in the following tax charges:

(i) an "unauthorised payments charge" of 40% of the value of the payment;

(ii) an "unauthorised payments surcharge" of a further 15% of the payment;

(iii) a "scheme sanction charge" of up to 40% of the unauthorised payment (subject to partial deduction to the extent payment is made of the unauthorised payments charge); and

(iv) in extreme cases, if the scheme loses its registered status, a deregistration charge of 40% of the scheme assets.

The charges at (i) and (ii) would be levied on the member. The charges at (iii) and (iv) would be borne by the scheme.

The person liable for the unauthorised payments surcharge (only, not the unauthorised payments charge) can apply for discharge of their liability to the surcharge if they can show that it would not be just and reasonable for them to be liable in respect of the unauthorised payment[23] in what is referred to as the "good faith" discharge.

Since 6 April 2018, HMRC can refuse to register or de-register an occupational pension scheme if a sponsoring employer has been dormant for a complete month in the year before the decision date.

For certain transfers requested after 8 March 2017, an overseas transfer charge could apply.[24]

4.4 The Pensions Ombudsman (TPO)[25]

TPO can decide complaints of injustice due to maladministration and disputes of fact or law. Members may complain to TPO if trustees/ providers have blocked a transfer that the member believes should have been made, or if a transfer is made which a member believes should not have been.

Where a complaint is upheld, depending on the facts of the case, TPO could require a blocked transfer to be made and/or compensation to be paid for financial loss and/or any member distress or inconvenience.

TPO must determine matters in accordance with the law and will therefore assess cases by reference to whether members have a statutory transfer right and/or transfer rights under the scheme rules TPO will take into account good practice on due diligence by a ceding scheme in its determination.

[23] https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm134100
[24] https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm112010
[25] Where to go for help with your pension complaint.pdf (pensions-ombudsman.org.uk)

4.5 Financial Ombudsman (FOS)[26]

The Financial Ombudsman (FOS) deals with complaints about businesses regulated by the Financial Conduct Authority (FCA) not just pension schemes.

FOS can only look at a complaint about a workplace pension if it's about the way it's been administered by an FCA-regulated business, or if it and its investments have been advised upon by an FCA-regulated business. All other complaints about workplace pensions are dealt with by the Pensions Ombudsman.

FOS determinations look to achieve a fair and reasonable outcome rather than being based on the definitive legal position.

05 POTENTIAL CONSEQUENCES FOR TRUSTEES AND PROVIDERS

The difficulty for those faced with a suspected pension scam is that the member may have a statutory transfer right (or a right to transfer under the scheme), but the trustee or provider has regulatory and other general responsibilities to act with due care and in the best interests of their scheme's members, who could risk losing their pension savings through pension scams. Whether the trustees or providers block or allow the transfer, there are potentially negative consequences for trustees/providers to consider.

If trustees/providers block a valid transfer request, the potential consequences include:

- For occupational schemes, TPR may take action where there was a statutory transfer right, including imposing a fine of up to £1,000 on an individual and up to £10,000 in any other case on anyone who has failed to take all such reasonable steps to transfer. Any evidence that a transfer would have risked the loss of member's funds may be a mitigating factor.
- The member could complain to TPO that they had a right to transfer and the trustees/providers should not have blocked it. Costs may be incurred defending the complaint which, if upheld, could result in compensation covering any actual financial loss and/or a payment for any distress or inconvenience caused. TPO's key focus in determining a complaint is likely to be on whether the member has a transfer right and, based on TPO's determinations published to date, where such a right exists it is likely that the complaint would be upheld.
- Having to recalculate and pay the transfer value.
- If FOS uphold a complaint, they will try, as far as possible, to put the complainant in the position that they would have been in but for the business's error. This could take the form of financial compensation paid to their pension plan or directly to the member. FOS may also make an award for any trouble and upset caused. Different compensation limits apply depending on when the complaint was made[27].

[26]https://www.financial-ombudsman.org.uk/
[27]https://www.financial-ombudsman.org.uk/consumers/expect/compensation

- Reputational issues for the trustees/providers if it is perceived that they have blocked a legitimate transfer request.
- An upheld complaint or court decision may make it harder for future pension transfers of concern to be blocked or delayed.

If trustees/providers transfer to a scheme which is a pension scam vehicle, the potential consequences include:

- A potential unauthorised payment, resulting in tax penalties for the member and the transferring scheme.
- The member could complain to TPO or FOS that the trustees/providers should not have transferred. Again, costs may be incurred defending the complaint which, if upheld, could result in a compensation covering any financial loss to the member of the transfer having been made and/or a payment for distress or inconvenience. Recent determinations have centred on whether or not adequate due diligence and warnings have been given to members.
- The scheme statutory discharge may be ineffective, meaning the member, and any contingent beneficiaries, could still claim scheme benefits, despite the transfer.
- A bespoke, non-statutory discharge, may not bind contingent beneficiaries, meaning the scheme could face claims by contingent beneficiaries for benefits.
- Reputational issues for the trustees/providers if it is perceived that they have not adequately protected member benefits.

Trustees may wish to take legal advice in any individual case.

06 PRECEDENTS

6.1 The Pensions Ombudsman (TPO)

Early TPO determinations and Hughes v Royal London

TPO published three determinations in January 2015 for cases where providers had blocked transfers because they suspected the receiving scheme was involved with pension scams.

In all three cases, following a detailed analysis of the receiving schemes' governing documents, TPO concluded that there was no statutory transfer right (although in one case the complaint was partly upheld in relation to the exercise of a discretionary transfer power under the scheme rules), but the providers had not carried out the necessary analysis to establish the members' transfer rights.

In his closing observations, TPO commented that "providers, trustees, managers and administrators will want to keep in mind that strictly they can only refuse to make a transfer beyond the end of the statutory period if there is no statutory right to it. They should satisfy themselves of the position, on the balance of probabilities and a correct interpretation of the law, based on such evidence as they can obtain from the member or receiving scheme or other sources – and reaching a decision may involve drawing inferences from a failure to provide evidence. Where they find that there is no right to transfer they should be expected to be able to justify that to the person asserting the right."

In an update published alongside the determinations TPO stated that "if the transferors had had a statutory right that they were determined to enforce, even in the face of severe warnings, then, after the providers had made such enquiries as thought necessary to establish whether the right existed, the providers could not have further resisted payment".

The High Court, in the case of Hughes v Royal London Mutual Insurance Society Ltd[28] (an appeal arising from TPO's Determination, PO-7126) confirmed that members' statutory rights were paramount.

In its judgment, the High Court also overturned TPO's interpretation of the Pensions Schemes Act 1993 relating to a member's right to a transfer. In particular it held that, while a member had to be in receipt of earnings ('an earner' as described in the legislation) to be able to take a transfer to an occupational scheme, those earnings did NOT have to come from an employer participating in the scheme.

The decision in the case of Hughes remains the current legal position although the Pensions Schemes Act 2021 has seen the law changed to allow regulations to be made which could require a genuine employment link if the transfer is to be made to an occupational pension scheme. The government has stated that it will consult with the industry on the details of the draft regulations. Scammers may anticipate this legal change by asking members to sign bogus employment contracts, service contracts or zero hours contracts.

Mr N: insufficient warning leads to need for reinstatement

In a more recent TPO case (PO-12763), a pension scheme member (Mr N) complained that the Authority responsible for the administration of his scheme (the Police Pension Scheme) transferred his pension fund to a new pension scheme without adequate checks. He also alleged that the Authority failed to provide him with a sufficient warning as required by TPR. Mr N was concerned that his entire pension fund may have been lost or misappropriated because of the transfer. TPO upheld the complaint against the Authority because it failed to:

- conduct adequate checks and enquiries in relation to Mr N's new pension scheme;
- to send Mr N the TPR transfer fraud warning leaflet; and
- engage directly with Mr N regarding the concerns it should have had with his transfer request, if properly assessed.

Importantly in this case, the transfer request was received in November 2013, nine months after TPR launched its Scorpion campaign warning of pension liberation/scam risks. TPO has previously held that from February 2013 there was an increase in the expected diligence when considering transfer requests. As such, more would have been expected of the Authority in this case.

The Authority was directed to reinstate Mr N's Scheme benefits, or provide equivalent benefits, adjusting for any revaluation since the transfer. To avoid 'double counting', the Authority could recover from Mr N any amount of his pension fund that the trustees of the new pension scheme can retrieve for him. The Authority was also directed to pay Mr N £1,000 to reflect the materially significant distress and inconvenience.

The determination reinforces the need for robust due diligence when trustees and administrators receive a transfer application. It also serves as a reminder of the importance of clear and prominent member warnings about pension scam risks.

[28] Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch) (19 February 2016) (bailii.org)

Mention of the Code of Good Practice by TPO/ need for proportionate due diligence

The Code of Good Practice was mentioned by TPO as a source for considering due diligence processes to combat pension scams (paragraph 32 of PO-16907 from June 2018). The same determination reminds us that the transfer value must be used to "obtain transfer credits in a receiving scheme" and that, if there were serious doubts about that, it could be that the statutory transfer right would not be established. No specific ruling was made in that regard as TPO determined that the receiving scheme had not established it was registered with HMRC meaning there was no statutory right.
A further TPO determination from September 2018 (PO-19383) has highlighted due diligence should be proportionate. TPO found that the level of due diligence was too high in relation to a relatively well-known pension scheme. TPO noted that there was nothing in the Code to recommend the level of due diligence undertaken when presented with a large, well established and easily verifiable scheme. However, whilst the Code does not explicitly connect scheme size and legitimacy, it does state, in Section 3.1 of the Practitioners Guide, that an initial risk assessment should be made, ruling out the need for more extensive due diligence when the receiving scheme legitimacy is easy to establish.

Another recent TPO determination from March 2020 (PO-26700, Mr S) does provide comfort though that it is reasonable for a trustee to seek scheme documentation where there is a question around whether the legal requirements relating to cash equivalents have been met. Standard Life in that case was entitled to have declined the transfer where the member could not provide documentation to clarify whether the prospective receiving scheme was an occupational or personal pension scheme.

Recent determinations: difficult balancing act

Additional determinations further demonstrate the difficulties in balancing members rights, carrying out transfer due diligence and endeavouring to act in members best financial interests.

PO 22236, Ms N

In this case, the member had moved to Canada and asked for a transfer to a Canadian pension scheme which, at the time of the request, was a Qualifying Recognised Overseas Pension Scheme (QROPS) and so capable of receiving an authorised (recognised) transfer. However, by the time the pension provider was ready to process the transfer, following its due diligence checks, the receiving scheme was removed from the QROPS list.

The member complained and TPO upheld the complaint, holding that the delays in paying the transfer constituted maladministration. TPO directed the provider to process the transfer, to the extent it did not conflict with scheme rules and to pay any tax charges incurred by Ms N arising from the fact that the receiving scheme had lost its QROPS status. TPO noted that, under section 151(2) of the Pension Schemes Act 1993, he had the power to order the provider to make the transfer. On this basis, the provider would be exempt from having to pay a scheme sanction charge by virtue of section 241(2) of the FA 2004.

PO 21489, Mrs H and PO 22965, Mr E

In this case, TPO upheld a member's complaint regarding the transfer of her benefits to an alleged pension scam arrangement. According to TPO, the transferring scheme administrator failed to:

- properly consider whether the member had a statutory transfer right (in this case the member did not)
- carry out proper due diligence on the receiving scheme, and
- engage directly with the member regarding concerns it should have had about the transfer.

The scheme administrator was directed to reinstate the member's scheme benefits or to provide equivalent benefits. An award for distress and inconvenience was also made. However, the scheme administrator was entitled to recover from the member any funds from the receiving scheme that might be recovered from the receiving scheme in future. Similar directions were given in the earlier determination of Mr N, PO 12763.
The decision is perhaps unusual in that Mrs H did not have a statutory right, living off State benefits

at the time, leaving the administrator to consider a transfer on a discretionary basis. However, unlike with the determination of Mr N, Mrs H had clearly been provided with the Regulator's Scorpion materials but simply not had certain red flags drawn to her attention. TPO placed weight on Mrs H's lack of financial awareness in determining that she would have changed her mind had she had been made aware of the risks. The importance of due diligence is mentioned above. Whether or not the due diligence carried-out is sufficient is a matter that will be judged against industry practice at the time of the transfer. This is illustrated in June 2020 determinations.

Similarly in PO 22965 (Mr E), TPO took account of a member not being financially sophisticated in finding that he would have changed his mind had he received appropriate warnings about his transfer before it took place.

PO 27889 and PO 27901, Mr Z

Mr Z was a member of two personal pensions (PPs) with two different providers. He received an unsolicited call from an adviser, who offered to carry out a free pension review. Acting on the advice, he established a limited company and, in 2013, subsequently transferred £3,197.19 (from one PP) and £31,899.42 (from the other) into the same small self-administered scheme (SSAS). The funds were subsequently lost or misappropriated. Mr Z raised complaints against both providers.

In response, the providers both submitted that the due diligence they carried out was reflective of industry practice at the time. They had checked that the necessary transfer forms were duly completed, checked the registration of the receiving SSAS with HMRC and received confirmation from the SSAS administrator that it was able to accept Mr Z's transfer fund. One provider added that they had advised Mr Z to seek regulated financial advice and both noted that Mr Z had a statutory transfer right.

TPO dismissed Mr Z’s complaints. Even though new pensions liberation fraud guidance had been issued by TPR in February 2013, at which time Mr Z’s transfers were being processed, TPO had previously held that providers must be allowed a reasonable period of three months to consider and implement new guidance and introduce appropriate procedures.

In addition, TPO noted that Mr Z was either aware of pensions liberation or was made aware following correspondence relating to his PPs and one provider had warned him of the possible tax consequences of early pension access.

TPO found that Mr Z would still have chosen to transfer his pensions even if he had received further warnings. He concluded that both providers had carried out all necessary checks in accordance with the standards of practice at the time. Therefore, there was no maladministration.

Word of warning: risk of lost investment opportunity if transfer delayed unreasonably

Whilst not specifically in the context of a pension scams/liberation determination, the case of Mr T (CAS-38354-V5L8) involving the Tenco Executive Pension Scheme adds a note of caution when it comes to considering delaying a transfer without proper basis.

In that case, Mr T complained that an undue and avoidable delay was caused in the transfer of his pension to a new provider. As a result he lost the opportunity to invest in the stock markets immediately following the Brexit referendum result in June 2016. A finding of maladministration was made where 46 working days had passed without evidence that the transfers were being actively progressed and where Mr T had made it clear from the outset that he wanted the transfers completed expeditiously. However, TPO's original finding was that the loss claimed by Mr T was not reasonably foreseeable, a point then successfully challenged on appeal before the High Court in 2019.

The matter was remitted to TPO, who determined that Mr T would have invested his pension funds in the FTSE 100 Index immediately after the Brexit leave vote, resulting in a lost profit of about £43,700. James Hay was ordered to pay this sum together with interest at the court's judgment rate of 8%.

This case has been followed in December 2020 with a further determination (PO-26512, Mr E) where unreasonable delay has resulted in a direction that the member can recover investment loss if satisfactory evidence of it is provided within a reasonable timeframe.

In a pension scams context, it is more difficult to see a basis for attaching liability for investment loss unless it transpires of course that the intended receiving scheme was legitimate and not a scam. In any event, reasonable progression of due diligence where a transfer has given rise initially to red flags ought to provide some defence against liability for investment loss. What it does show though is that a good paper-trail is needed of questions asked and answers received to ensure no undue delay is experienced along the way.

Mr Y (PO-24361): trustee's refusal to transfer members fund to overseas pension arrangement on grounds of "irrelevant" factors amounted to maladministration

TPO has partly upheld a complaint brought by a deferred member of a defined benefit (DB) pension fund concerning the fund's delay in transferring his pension to another scheme. The member had initially requested to transfer his three UK-based pensions to an overseas personal pension scheme in Jersey. At the time, his December 2017 cash equivalent transfer value (CETV) quotation was guaranteed until March 2018. Shortly before the deadline, the member's independent financial adviser (IFA) submitted the transfer forms. However, the administrator later discovered that the forms covered transfers to UK-based pension schemes, whereas the member was required to submit an overseas transfer form. Soon after, the relevant overseas transfer form was completed and the administrator confirmed the December 2017 CETV quotation had been secured.

By mid-2018, the member was dissatisfied with the delay and filed a complaint against the administrator, noting that its "excessive" questions and insistence on carrying out standard checks on all overseas transfers caused him to suffer consequential losses.

The member argued that the administrator's due diligence was excessive and erroneous in relation to its request for further information regarding the receiving scheme's declaration of trust. However, the TPO held that there was no maladministration on the administrator's part, explaining that its request was reasonable to allow the fund trustees to establish whether the receiving scheme rules satisfied the legal requirement of a qualifying recognised overseas pension scheme (QROPS) to allow the overseas transfer to take place without incurring tax charges and sanctions. TPO also pointed out that there had been undue delay on the administrator's part in requesting that information.

TPO concluded that:

The trustee took into account irrelevant factors when it decided to decline Mr Y’s transfer request and did not explain the reasons for its refusal in a clear and consistent manner and that:

- It inappropriately asked Mr Y to cover the costs of further due diligence, even though it did not believe further due diligence would likely address whether the receiving scheme would qualify as a QROPS.
- It caused delays when reviewing the information submitted for Mr Y’s transfer request.
- Certain aspects of the service Mr Y received from both the administrator and the trustee were unacceptable.

TPO determined that, since the member had a statutory right to transfer, by virtue of pensions legislation, a transfer to an overseas arrangement was permitted provided that the transferring scheme is an HMRC registered scheme, and the receiving scheme is a QROPS. Therefore, the trustee's refusal to allow the transfer on the basis that HMRC would not guarantee a scheme appearing on the list of ROPS to be a QROPS amounted to maladministration.

TPO ordered the trustee to pay the member £1,000 for the serious distress and inconvenience caused and directed it to redetermine whether the receiving scheme is a QROPS, without consideration of the possibility that HMRC might decide to withdraw QROPS status in the future. Additional provisions to ensure that Mr Y did not suffer financial detriment should the transfer payment subsequently be made were also stipulated.

6.2 UK Court Cases

Fraud Compensation Fund: Pension Protection Fund v Dalriada Pension Trustees High Court Case

The recent High Court judgment in the case of the PPF v Dalriada[29] could result in compensation being payable to certain scammed pension schemes from the Fraud Compensation Fund (FCF). This fund is aimed at compensating occupational pension schemes where losses to a scheme result from dishonesty and there is evidence that a criminal offence might have been committed. Where compensation is payable, it would be paid to the scheme, which will then pay benefits under the scheme rules.

Each case will have to be considered on its own merits, but it is anticipated that many liberation schemes which facilitated early access to pension funds may be eligible for fraud compensation.

This is a key judgment and important questions for specific cases will be whether a liberation scheme was a sham from the outset (i.e. did all the parties know it was bogus) and were the losses due to dishonesty/fraud or just bad management. Very few pension liberation schemes are likely to be shams, because the legal test for a sham is difficult to establish, and the sheer number of members enticed into them makes it difficult to see how the test could be met. Some schemes may well be shown to be legally valid, but badly managed by the trustees (i.e. they invested in inappropriate assets). Unless dishonesty can be proven, there will be no cover under the FCF.

Key issues raised by the judgment include:

- How the FCF will meet the potential number of eligible claims; and
- To what extent compensation will be payable as even for eligible schemes: losses must be attributable to the dishonest act.
- The judgment has no bearing on the possibility of members of pension liberation schemes being subject to personal tax penalties although it leaves scope for scheme sanction charges levied on the schemes being recovered from the FCF.

The outcome of this case will not have any impact on compensation for personal pension schemes, which tend to be the model used for more recent scams. Members of personal pension schemes might have recourse to the FSCS but this is uncertain and depends on individual circumstances and might involve considerable delay if the relevant regulated entity is not insolvent and not on the FSCS' list of companies "in default" – important prerequisites for a claim.

Other Court Cases

FCA v Avacade Limited and Alexandra Associates (UK) Limited

The FCA's recent High Court action against Avacade Limited and Alexandra Associates (UK) Limited saw the Court order that £10.7 million should be paid back to the victims.

The FCA's case concerned the activities of Avacade Limited (in liquidation) and Alexandra Associates (UK) Limited trading as Avacade Future Solutions (AA) and their directors. The two companies provided a pension report service and made misleading statements which induced consumers to transfer their pensions into self-invested personal pensions (SIPPs) to invest in alternative investments such as HotPods (office space available for rent), tree plantations and Brazilian property developments.

More than 2,000 consumers transferred in the region of £91.8m from their pensions into SIPPs. Approximately £68m of that amount was invested in products promoted by Avacade and approximately £905,000 was invested into a product promoted by AA – a fixed rate bond relating to a Brazilian property development. From these investments Avacade and AA earned commissions in the region of £10.7m. Many of the underlying investments have failed or are in liquidation.

[29]https://www.bailii.org/ew/cases/EWHC/Ch/2020/2960.pdf

Adams v Carey Pensions

The appeal is being heard by the High Court in 2021. The appeal follows the original judgment in May 2019. The judgment was considered a landmark ruling for the SIPP industry given it created the possibility of SIPP operators being less likely to be liable for the investments they accept into their SIPPs.

Mr Adams was introduced to Carey Pensions (now Options UK Personal Pensions) by an unregulated introducer. He then invested his pension in Store First storage units. Carey carried out the transaction on an execution-only basis as Mr Adams had instructed. The investments subsequently failed and Mr Adams took Carey Pensions to court to attempt to secure redress.

During the 2018 trial, Mr Adams' representatives argued that:

- Carey had breached FCA Conduct of Business (COBS) rules which require a firm to act fairly, honestly and in accordance with the best interests of clients;
- that it was responsible for any advice given by the introducer;
- that the introducer arranged the underlying investment; and
- that Carey was in a joint venture with the introducer and was therefore jointly liable for its actions.

The judgment ruled that Carey was acting on an execution-only basis; that it did not advise Adams; that the investment in Store First was high risk; and that Adams was responsible for his own investment decisions. The ruling also outlined that the introducer fell short of 'arranging the investment' and that it did not advise Adams to enter the SIPP.

6.3 International Court Cases

Khuller v FNB Appeal, Royal Court of Guernsey

The appeal concerned a decision of the Royal Court of Guernsey from 2nd December 2019 Khuller v FNB, in which the Royal Court dismissed actions for breach of duty by FNB.

The original decision concerned losses that had occurred on underlying investments in an insurance bond within a QROPS. Ms Khuller had been advised by an unregulated adviser while she was living in Thailand and had transferred her two UK DB pensions into the QROPS.

The most significant loss arose from the investment of approximately half the pension fund in the LM Performance fund. This fund lost all its value. The Court did not find the Trustees grossly negligent or indeed negligent at all as the Trustees had reasonably relied on the advice of an appointed investment adviser/manager. The blurring of those differing roles was a critical aspect in the successful appeal which found that the Trustees had been grossly negligent and in breach of their duties in allowing the investments.

This is an important decision highlighting the difference between an investment adviser and investment manager when appointed by trustees and how it affects their normal responsibilities in a non-reserved powers trust. The appeal was made on both the facts of the case and the conclusion of law made.

Essentially it was based on two key elements of the case. Firstly the appointment of the adviser and secondly the investments made. The latter element was where the appeal found success. The trustees sought to show that they could rely on the delegation to the adviser/manager to remove or qualify their duties as trustees and in any event to be liable the trustees had to be shown to have acted with gross negligence. Whilst in the appeal the appointment of the adviser was seen to be reasonable as certain checks had been made by the trustees and thus the original decision was undisturbed, the decision concerning breach of duties as regards the choice of investments was overturned as it was concluded a mistake had been made in the original decision as to the position to which the adviser was appointed. The appointment was as an adviser not as an investment manager and clear delegation of the trustees' responsibilities was not achieved.

In reality, the adviser made direct instructions to the bond holder without prior knowledge of the trustees, who saw themselves unable to choose investments as they were not investment professionals. The appeal court concluded the trustees had acted with indifference to its duty and the identified risks, which qualifies as being grossly negligent.

This case demonstrates that whilst some offshore advisers may have acted poorly for their clients, the trustees may be liable for claims if they have not properly delegated their responsibilities or used reserved powers trusts. As noted in the case it "… illustrates the dangers inherent in prioritising a smooth path for sales…".

Spain & Gibraltar Court Cases

PSIG continues to monitor the various international court cases which are currently being progressed and which may well impact matters in the UK. These include the trial of those accused of fraud and falsification charges in the Premier Pension Solutions and Continental Wealth Management transfer cases in Denia, Spain and the claim by STM Fidecs in Gibraltar against thirteen defendants for the return of "misappropriated" money in the Trafalgar Multi Asset Fund case. These cases all relate to scams on UK pension scheme members.

In addition, the following is an extract from a recent International Adviser article[30]

Isle of Man & Malta Court Cases

"A group of UK and international investors have launched a multi-million-pound claim against life insurers Quilter International and Friends Provident International. The claim, which has secured litigation funding, centres around what the group alleges was the mis-selling of "high-risk funds" through insurance wrappers to "unsophisticated British and international investors living overseas". The products were described as life assurance policies, but the group said they were "unit-linked" and featured high risk funds which were "entirely inappropriate for unsophisticated investors". The group said that many of the expats are now retired and have lost their life savings.

The case is being brought by UK-based law firm Signature Litigation, which said that the insurers "sidestepped British investment regulations" by selling over £100m ($124m, €112m) worth of these products via the Isle of Man. Both life insurance companies deny any wrongdoing.

Again, we will await the outcome of this case with interest but it is already evident that some SIPP operators may be exposed to Ombudsman determinations and potential litigation if they have not undertaken sufficient due diligence on the investments which are made available via their SIPP offerings. The Berkeley Burke High Court judicial review in 2018 is perhaps the most high profile example in the UK but the July 2020 judgment by Malta's Arbiter for Financial Services is also worth highlighting in view of the potential implications for international SIPP providers.

The Maltese arbiter has concluded that Momentum Pensions Malta was partly responsible for the losses suffered by 55 clients of defunct advice firm Continental Wealth Management (CWM).

Momentum accepted business from CWM, which was an unlicensed investment adviser and allowed an unsuitable portfolio of underlying investments

[30]https://international-adviser.com/investors-launch-legal-claim-against-two-life-insurance-giants/

to be created within the retirement scheme. The portfolio comprised high-risk structured products of a non-retail nature, which conflicted with the risk profiles of the scheme members. The arbiter concluded that:

"There is sufficient and convincing evidence of deficiencies on the part of [Momentum] in the undertaking of its obligations and duties as trustee and retirement scheme administrator of the scheme." and that "it is also evidently clear that such deficiencies prevented the losses from being minimised and in a way contributed in part to the losses experienced."

He added: "Whilst the retirement scheme administrator was not responsible to provide investment advice to the complainants, [they] had clear duties to check and ensure that the portfolio composition recommended by the investment adviser provided a suitable level of diversification and was inter alia in line with the applicable requirements in order to ensure that the portfolio composition was one enabling the aim of the retirement scheme to be achieved with the necessary prudence required in respect of a pension scheme." Taking into account the role and responsibilities of CWM, "the arbiter considers that [Momentum] is to be only partially held responsible for the losses incurred." Momentum has been ordered to pay complainants 70% of the "net realised losses sustained on their investment portfolio".

The implications for transferring schemes are clear: they must ensure that their services are provided to the highest possible standards and evidenced by robust and challenging governance. TPO has also shown in previous determination that he will not hesitate to order benefits to be reinstated if sufficient due diligence has not been undertaken or adequate member scam warnings have not been provided.

07 DEVELOPMENTS

7.1 Pension Schemes Act 2021

The Pension Schemes Act paves the way for a change to the statutory transfer right, the details of which will be developed in forthcoming Regulations, based on the provisions outlined in clause 125 of the Act. The Regulations will require consultation prior to implementation but are expected to include a requirement of evidence of an earnings link to an employer of the receiving scheme, where it is an occupational pension scheme.

The Act has also provided scope for a requirement that transferees seek independent guidance if sufficient pension scam warning signs are identified. Trustees will need to look closely at the detail of draft Regulations once they are produced. Regulations are expected to be in place by October 2021. A further update to the Code will be issued to reflect the new Regulations.

7.2 Work & Pensions Committee Inquiry

In July 2020, the Work and Pensions Committee also launched an inquiry[31] into the impact of pension freedoms and level of protection for pension savers. The three-stage "broad inquiry" will investigate how savers are protected as they move from saving for retirement to using their pension savings under freedom rules. The inquiry has first been focussing on pension scams before moving on to accessing pension savings and saving for later life. PSIG has provided a formal response to the Committee and Margaret Snowdon OBE, Chair of PSIG, has also provided oral evidence.

The report was published on 28th March[32]. PSIG welcomes this excellent, clear and helpful report.

7.3 All Party Parliamentary Group

An All Party Parliamentary Group (APPG) has also been established to look into pension scams. PSIG will update the Code as required to reflect anything which may emerge from this group.

[31]https://committees.parliament.uk/work/457/protecting-pension-savers-five-years-on-from-the-pension-freedoms-pension-scams/
[32]https://committees.parliament.uk/publications/5322/documents/53036/default/

7.4 FCA Call for Input on the Consumer Investments Market

In September 2020, the FCA issued a Call for Input on the Consumer Investments Market.[33] Section 7 is entitled Tackling Scams and the paper asked;

- How can people be better protected from scams?
- What do you think are the most suitable and proportionate remedies to further tackle scams and other investment harms?

Other questions the FCA have posed include:

- How can we better ensure that those who have the financial resources to accept the risks of higher risk investments can do so if they wish, but in a way that ensures they understand the risk they are taking?
- How can we use the regulation of financial promotions to make it easier for people to understand the level of regulatory protections afforded to them when they invest?
- What more can we do to ensure that when people lose money because of an act or omission of a regulated firm, they are appropriately compensated and that it is paid for fairly by those who cause the loss?

PSIG has provided a formal response to the FCA.

7.5 HM Treasury Consultations On Regulatory Framework For Approval Of Financial Promotions & Cryptoasset Promotions

In July 2020, HM Treasury published two consultations proposing amendments to the UK regulatory framework for approval of financial promotions[34] and with respect to cryptoasset promotions[35]. The consultation papers propose changes to the way that unauthorised persons communicate financial promotions more generally and also specifically in regards to cryptoassets.

The consultations follow the November 2019 FCA ban on the promotion of speculative mini-bonds to retail investors and guidance for firms on approving financial promotions and their concern regarding due diligence and the investors' understanding of the products being marketed.

The consultations outline that additional safeguards are required to ensure that approval by an authorised person is a genuinely effective means of ensuring that consumers are protected from deficient or potentially harmful financial promotions.

[33]https://www.fca.org.uk/publication/call-for-input/consumer-investments-market.pdf
[34]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902101/Financial_Promotions_Unauthorised_Firms_Consultation.pdf
[35]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902891/Cryptoasset_promotions_consultation.pdf

7.6 Pension Schemes Act 2021

As part of the Regulator's efforts to prevent pension scamming, in November 2020 in partnership with PSIG, it launched its Combat Scams Pledge initiative[36]. It asks trustees, providers and administrators of pension schemes to pledge to do what they can to protect scheme members and follow the principles of the PSIG) Code of Good Practice. Making the pledge requires a commitment to:

- "regularly warn members about pension scams
- encourage members asking for cash drawdown to get impartial guidance from The Pensions Advisory Service
- get to know the warning signs of a scam and best practice for transfers by completing the scams module in the Trustee Toolkit and encouraging all relevant staff or trustees to do so; studying and using the resources on the Financial Conduct Authority (FCA) ScamSmart website, our (TPR's) scams information and the PSIG code; considering becoming a member of the Pension Scams Industry Forum by contacting PSIG
- take appropriate due diligence measures by carrying out checks on pension transfers and documenting pension transfer procedures
- clearly warning members if they insist on high-risk transfers being paid
- report concerns about a scam to the authorities and communicate this to the scheme member"

PSIG welcomes TPR's initiative and the opportunity for transferring schemes to formally pledge and evidence their commitment to this. The Code is fully aligned with the both the new pension scams module within the Trustee Toolkit and the separate training materials which have been developed to support the pledge.

Scams are now so complex that the pensions industry alone will never be able to prevent them all. However, TPR has taken action against scammers, most notably the successful High Court prosecution ordering four individual defendants to repay the funds (£13.7m) they dishonestly misused or misappropriated from the pension schemes – the first time such an order has been obtained. Further information on this case can be found in the Case Studies section of this Code.

Project Bloom, the multi-agency initiative chaired by TPR, has been instrumental in sharing intelligence which has led to criminal prosecutions and successful convictions. Bloom has also successfully disrupted scammers by taking down websites, adverts, and intervening to secure pension assets that would otherwise fall into the hands of the scammers.

TPR and the FCA have also joined forces to launch the ScamSmart campaign[37] urging people to be aware of scammers targeting their pension savings. The campaign targets savers aged between 45 and 65, which the regulators say is the group most at risk.

The regulators have also taken additional actions following the Covid-19 pandemic and, from April 2020, savers looking to transfer from a DB to a DC pension during the crisis must be warned that it's unlikely to be in their best long-term interests. As outlined in Section 2.1 of the Practitioners Guide, under TPR guidance[38] trustees are asked to send DB members looking to move retirement funds a letter warning them of the risks during the pandemic and urging them to consider the decision carefully. The guidance also calls on trustees to:

- highlight the free, impartial pensions guidance from Pension Wise, including phone appointments and online information;
- encourage members to take regulated advice to understand their retirement options;
- identify increased risks in how a member has decided to access their pension funds and give appropriate warnings of the risks and implications of their chosen option; and
- monitor CETV requests and inform FCA of unusual or concerning patterns, such as spikes or the same adviser across multitude of requests.

[36]https://www.thepensionsregulator.gov.uk/en/pension-scams/pledge-to-combat-pension-scams?msdynttrid=p5TEy22gFSNrjDckaYX4Ypbm557PZcq HTVzRWZ1Q7nQ
[37]https://www.fca.org.uk/scamsmart/how-avoid-pension-scams
[38]https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/communicating-to-members-during-covid-19

7.7 FCA Action

FCA & British Steel Advice Complaints

The FCA intervention in the British Steel Pension Scheme transfer advice scandal should also be noted. The FCA has written to over 7,000 former members of the scheme to let them know that they may have received unsuitable advice to transfer and to encourage them to make a complaint against their adviser. Any compensation is awarded by the Financial Ombudsman Service, unless the adviser has gone bankrupt or into liquidation, in which case it is paid under the Financial Services Compensation Scheme.

FCA Letter "Managing the risks of Defined Benefits to Defined Contribution transfers"[39]

This letter was sent to the Chief Executive Officers of major providers on 22nd March 2019. In it, the FCA detailed how providers should treat customers fairly in the context of DB to DC transfers. From a pension scam prevention perspective, the key requirements are outlined in the following paragraph:

"Management Information (MI) – You need to ensure your MI is sufficiently detailed to enable management to fully understand and manage the risks from DB pension transfers. You should use metrics that allow meaningful oversight, specifically on customer/adviser behaviour. This should identify negative trends, such as a high volume of transfers from a single scheme over a short period or customers transferring out of new DC arrangements soon after transferring from DB schemes. You should also assess MI for completeness. For example, where you monitor insistent customers, this should cover all applicable transfers including those accepted through platforms. Without this, the MI cannot accurately reflect your overall risk profile. Where you identify negative trends, we expect you to investigate and assess what action you may need to take, including notifying us."

These requirements have been incorporated within Section 3.1.2 of the Practitioners Guide.

International SIPPs & Offshore Investment Bonds

As outlined in Section 2, the FCA has provided information for consumers on transferring or switching UK pensions into international self-invested personal pensions (SIPPs).[40]

Overseas advisory firms often invest consumers' pension funds through an offshore investment bond within an international SIPP. The FCA is concerned that consumers who invest in this way may be exposed to high and/or unnecessary charges. They are also concerned that the tax benefits of investing through an offshore investment bond are largely redundant to someone investing in a UK personal pension scheme.

The FCA has written to providers of international SIPPs and an additional letter to those which provide offshore investment bonds via the SIPP[41] requesting detailed information.

FCA Register

From December 2019, the FCA no longer updates the FCA Register with information on individuals such as CF30s who no longer hold Approved Persons roles. This is because the FCA is extending the Senior Managers and Certification Regime to all FCA solo-regulated firms who will then be solely responsible for assessing the suitability of their staff.

To make information on individuals more accessible, the FCA has launched the directory for solo-regulated firms in December 2020 with information on certified staff and others once they have been assessed as fit and proper, including those who previously held a CF30 role.

Trustees and providers should check that the advice firm has the correct permission to advise on pension transfers by verifying the firm's details on the FCA Register. The firm information section allows trustees to contact firms directly for more information. The FCA also intends to include links to other useful sources of information.

[39]https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-managing-the-risks-of-defined-benefits-to-defined-contribution-transfers.pdf
[40]Information for consumers on transferring or switching UK pensions into international self-invested personal pensions (SIPPs)
[41]https://international-adviser.com/international-sipps-latest-fca-crackdown-target/?NLID=20201214-IA-NEWS-AM-ACI-BANNERS&NL_issueDate=20201214&utm_source=20201214-IA-NEWS-AM-ACI-BANNERS-20201214&utm_medium=email&utm_campaign=investmentnews&utm_visit

7.8 Claims Management Companies

Claims Management Companies (CMCs) are encouraging scam victims to start actions against transferring schemes. Claims firms are identifying people who have transferred from pension schemes and have become a victim of a pension scam or are otherwise having problems following the transfer.

Such firms typically ask members to sign letters of authority so that the firm can act on their behalf for the purpose of alleging that transferring schemes did not conduct adequate checks before allowing transfers-out.

Many of these claims are clearly speculative and, in those circumstances, schemes are encouraged to respond 'robustly' to them stating, so far as relevant that:

- in connection with any transfer, the [transferring scheme] has always followed prevailing legislation, its trust deed and rules and guidance from the TPR; and
- for occupational pension schemes, if a member or former member has a complaint or dispute then, in the first instance, the individual member should follow the procedure set out in the scheme's internal dispute resolution procedure [and include a summary of the IDRP].

Another tactic is to get members to make General Data Protection Regulation (GDPR) Data Subject Access Requests (DSARs). Those subject to a DSAR will need to comply and take any advice they deem necessary. However, consider whether every document request properly falls within the scope of a DSAR. In some cases, a Claims Management Company might attempt to obtain disclosure to which it is not entitled. For example, due diligence undertaken in looking into the prospective receiving scheme, which might prove extensive, need not be disclosed under a DSAR if the member concerned is not specifically identifiable from it and if that due diligence could just as easily relate to a transfer request made by another member. By contrast, any conclusions reached from that due diligence and relayed to the specific member might well need to be provided. It is possible to redact information gathered to prevent financial crime. This could apply to due diligence that highlights any suspicions, which might assist scammers improve their techniques.

PSIG has called for further guidance from the Information Commissioner's Office (ICO) to address the issue of DSARs being used by dubious Claims Management Companies (sometimes on the back of cold-calling) to facilitate spurious compensation claims following a pension transfer. This "secondary scamming" is now a key concern. DSARs are being used not to enable pension scheme members to understand how and why their data is being used but rather by Claims Management Companies to facilitate such redress complaints. There have also been examples recently in the pensions press of individuals (including directors) of former advice firms – some with numerous FSCS claims against them for poor pensions advice – establishing or moving to claims management firms and then offering claims management services to former clients of the now defunct advice business.

7.9 Other Guidance

PASA Defined Benefit Transfers Code of Good Practice

In July 2019 the Pensions Administration Standards Association (PASA) DB Transfers Working Group released guidance[42] focusing on what was defined as a "Standard" or straightforward case. It was originally intended this Guidance would be Part 1 of a two-part release with Part 2 covering "Non Standard" Cases. It was subsequently agreed, rather than produce a Part 2, a Code of Good Practice (the Code) would be created to cover all DB transfers. PASA has consulted on the Code and expects to publish a full version in 2021.

The Chair of the PASA DB Transfers Working Group, James Ellison, said "The time taken to process DB transfers varies hugely, some taking months to execute. Unfortunately, delays damage relationships with scheme members and lead to a breakdown of trust. This can result in members making decisions which are not in their best interest, or worse still, increase the risk of becoming victims of pension scams. Scammers often use the time taken to process a transfer to create an impression of trustees seeking to hold on to a member's money and to incite them. It is a horribly sophisticated process and there are lots of members already making poor choices. We are extremely mindful of needing to find the balance between member protection and their statutory right to take their pension in a different shape or form, via a flexible arrangement. As a group, our key objective is to create a framework to help deliver this balance. This Code sets out to create faster, well-communicated, efficient and cost-effective strategies scheme administrators and wider stakeholders can execute."

The PASA Code is complementary to the PSIG Code of Good Practice which, of course, focuses purely on pension scams.

Personal Finance Society's Code of Good Practice On Advising Defined Benefit Pension Transfers

The Personal Finance Society's Pensions Advice Taskforce has published a voluntary Code of Good Practice[43] on advising DB pension transfers. This sets out the "gold standard" that advisers must attain when seeking to become accredited under the scheme. The standards are in excess of those set out under regulation and include declaring conflicts of interest and all fees expected from a transfer and are aimed at helping consumers identify ethical advisers. It is expected that in due course accredited advisers will be shown on a register held by the Money and Pensions Service (to be rebranded as MoneyHelper from June 2021[44]).

FCA, TPR and TPAS Joint Protocol On Defined Benefit Pension Transfers

The FCA, TPR and TPAS have published a joint protocol[45] to enable early intervention by them to help selected pension scheme trustees ensure that their members are adequately and fully informed when considering transferring their DB pensions. If an event occurs that the regulators believe could lead to increased transfer activity, such as a scheme restructure, they will contact the trustees, reminding them of their obligations. The regulators therefore expect scheme trustees of DB schemes to keep certain electronic records of transfers, including the name of the receiving scheme, the name of the regulated IFA firm, the IFA individual who gave advice (although it should be noted that this may not be possible without direct enquiry of the firm employing the adviser), the Cash Equivalent Transfer Value (CETV) amount, the guarantee date and the date of payment.

[42] https://www.pasa-uk.com/guidance/db-transfers/
[43] https://www.thepfs.org/about-us/initiatives/the-pension-transfer-gold-standard/
[44] https://maps.org.uk/moneyhelper/?cn-reloaded=1
[45] https://www.fca.org.uk/publication/mou/fca-tpr-tpas-joint-protocol.pdf

COMBATING PENSION SCAMS:

Summary of changes

01
INTRODUCTION

This document outlines the key changes to the Pension Scams Industry Group (PSIG) Code of Good Practice in this version (v2.2) from the previous update to the Code (v2.1) which was issued in June 2019. This summary is intended purely as a reference document. Please refer to the other Code documents for full information on each of the changes.

02
STRUCTURE

The Code now comprises the following elements:

Practitioner Guide

- Detailing the robust but proportionate due diligence steps that should be undertaken by pension schemes assessing the pension scam risk of a requested transfer.

Resource Pack

- Containing materials firms can use to undertake the due diligence detailed in the Practitioner guide. This includes example scripts, letters and discharge form wording, Action Fraud reporting and case studies.

Technical Guide

- Detailing the rationale behind the guide. This includes legislative and regulatory requirements as well as the Combat Scams Pledge initiative.

Summary of Changes

- Detailing the changes since the previous version of the Code (v2.1).

03 REGULATORY DEVELOPMENTS

3.1 TPR

Key actions relate to:

- The Combat Scams Pledge initiative.
- A new defined benefits (DB) letter which warns members who are thinking of transferring their benefits to a defined contribution (DC) arrangement of the risks of doing so.
- Additional guidance for trustees which calls on them to:
  - highlight the free, impartial pensions guidance from Pension Wise, including phone appointments and online information;
  - encourage members to take regulated advice to understand their retirement options;
  - identify increased risks in how a member has decided to access their pension funds and give appropriate warnings of the risks and implications of their chosen option; and
  - monitor CETV requests and inform FCA of unusual or concerning patterns, such as spikes or the same adviser across multitude of requests.

3.2 FCA

Key actions relate to:

- Updates to the ScamSmart site following the Covid-19 pandemic.
- The identification of "three generations" of scams (as outlined in Section 2 of the Technical Guide).
- British Steel advice complaints.
- Concerns regarding International SIPPs and offshore investment bonds.
- A warning on complicated investment structures.
- Final rules and guidance on pension transfer advice including the Contingent Charging ban.
- Guidance on what a member should expect when taking advice in relation to transferring out of a DB scheme and into a DC arrangement.
- The FCA Call for Input on Consumer Investment Market.

3.3 DWP

Reference is made to the regulations which are being developed following the passing of the Pension Schemes Act 2021.

04
THE PENSIONS OMBUDSMAN (TPO) DETERMINATIONS

Various recent TPO determinations issued since the last Code update are featured.

05 LEGAL DEVELOPMENTS

5.1 UK

The following High Court judgements are referenced:

- Fraud Compensation Fund: Pension Protection Fund v Dalriada Pension Trustees.
- FCA v Avacade Limited & Alexandra Associates (UK) Limited.
- Adams v Carey Pensions

5.2 Overseas

A number of overseas court cases are referenced including the Khuller v FNB Appeal in the Royal Court of Guernsey.

06 ADDITIONAL DEVELOPMENTS

These include:

- A report by the Police Foundation which outlined a series of recommendations for improvement.
- The Work & Pensions Committee Pension Scams Inquiry.
- The establishment of the All Party Parliamentary Group (APPG).
- A section on the work of the Financial Ombudsman Service (FOS).
- HM Treasury consultations on the Regulatory Framework for Approval of Financial Promotions and Cryptoasset Promotions.

07 SPECIFIC CALLS TO ACTION

- The recommendation to consider the use of the telephone to better engage with the member during the due diligence process and also that a final telephone call should be made with the member before any transfer payment is made when sufficient concerns of pension scamming have been identified. This mirrors the requirements outlined in TPR's Combat Scams pledge.
- All transfers of concern should be reported (not merely those transfers which are refused).
- Reports should be made to a number of different agencies as required. Full information is provided in Section 8 of the Practitioners Guide.
- Appropriate management information should be developed and maintained. This should include details of transfers refused, cancelled by the member when concerns have been raised with them and transfers paid under discharge at the insistence of the member.

08 OTHER CHANGES

- Additional questions have been included within the Questions To Ask Members section.
- The Recording Decision Sheet has been revised to reflect all product types.
- Case studies have been revised and include examples of International SIPP transfers.
- Reference to the rebranding of the Money and Pensions Service (MaPS), the Pensions Advisory Service (TPAS) and Pension Wise as MoneyHelper from June 2021[1].

[1]https://maps.org.uk/moneyhelper/?cn-reloaded=1

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