Spotlight on Pensions

PRESENTS

Le Grand View

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The Transfers Challenge

One of the most challenging areas for pension scheme trustees is that of addressing members' transfer requests. When defined benefit (DB) occupational schemes were the norm, implementing a member's statutory right to transfer the value of their benefits to a new employer's scheme was straightforward, with little trustee decision required other than with valuing the accrued benefit.

Proliferation of pension vehicles, starting with personal pensions in 1988, the widespread move to defined contribution (DC) bases, and the policy principle that transfers should be permitted between all types of tax-relieved arrangements, increased complexity. Then came the DC pension freedoms regime from 2015 and the low interest-rate environment of the past few years, which inflated DB transfer values and increased their apparent attractiveness as an accessible lump sum to many members. With this complexity has come the need for greater trustee input, to help protect members against making "bad" transfers.

Recent statistics show worryingly high numbers of unsolicited approaches being made to pensioners and active scheme members to move their pension funds, which the continued delay in the Government's promised ban on cold calling has done nothing to help. Trustees receive complaints from parties alleging that the trustees are thwarting their objectives, where they are simply following due process and are acting in members' interests. The role of the trustee in transfers is a minefield through which they have to pick a very careful path.

Illegal transfers

The factors driving the problems for trustees can be split into two camps – legal and illegal. The latter fall mainly under the "scams" heading.

Scams have existed for many years, initially as "pension liberation". These were largely attempts by fraudsters (sometimes aided by members) to orchestrate transfers into alternative schemes run by the fraudsters from where tax-relieved funds were then accessed in ways that contravened the terms on which tax relief had been given. A key feature was usually access unconnected with retirement or approved retirement age. Often members lost significant sums, whether directly to the fraudsters, through HMRC tax penalties, or both.

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The scams' focus shifted with the introduction of the pension freedoms regime in April 2015. This allows access to pension funds from age 55 with no legal rules around how and when those funds are accessed, nor for what reason. Although probably decreasing, "early access" frauds have not gone away, and are supplemented with fraudsters' focus on transfers to arrangements purportedly providing stellar investment performance.

The pension freedoms regime encourages members to use accrued funds in ways that fit with their wider personal financial situation. Although useful for some, such as those with high net wealth and with access to paid advice, it can be less satisfactory for the majority who have neither. They risk taking decisions that they may later regret and without an effective support system, will continue to be vulnerable to inappropriate external influences. This makes the task of the conscientious trustee more difficult.

Trustees' approach to scams

Members have a statutory right to a transfer. There are very few situations where trustees may refuse a valid member request. Concerned trustees are in a difficult situation when faced with a transfer request that they believe is likely to be illegal, but where necessary evidence on which to refuse it is lacking. Failure to make the transfer without such proof risks their being penalised, but effecting it may expose them to liability later when things go wrong. In short, they may be damned if they do and damned if they don't.

Organisations such as The Pensions Regulator (TPR) and Financial Conduct Authority (FCA) publish extensive information on identifying potential scam situations (which are constantly changing) and advising on how to deal with them. TPR's website also contains the Pension Liberation Industry Group Code of Good Practice which provides practical guidance for trustees. It recommends adopting three core principles:

- Raise awareness of scams for members and beneficiaries
- Have a robust but proportionate process for assessing whether a receiving scheme is operating as part of a scam, and for responding accordingly
- Be aware of known current strategies of scammers and refer to warning flags as indicated in TPR guidance, FCA alerts and Action Fraud.

Legal, possibly unwise, transfers

The 2015 pension freedoms regime also allows transfers that, although legal, might not be in the best interests of individual members. One worrying trend is in requests for transfers of the capital value of accrued DB benefits into arrangements providing only DC options.

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Some members are tempted by the freedoms available to DC funds, into giving up the protections offered by their DB scheme. Recent increases in transfer values driven by low interest rates have increased that temptation. Although such transfers may be beneficial for some, for many more the DB protections arguably provide greater "value". The legal requirement for financial advice for transfer amounts exceeding £30,000 is undermined by the absence of a requirement to take any notice of it.

The "true value" of a DB benefit can be further misunderstood by poor appreciation of the protection from the Pension Protection Fund, which too often focuses on the potential for (modest) benefit reductions, rather than the security it provides for the majority.

It is little wonder then that many trustees are frustrated by a system that seems to provide them with scant support when trying to do the best for members in transfer situations.

Solutions

How can conscientious trustees best help their members? As with most trustee work, robust processes are essential. For scam situations, the Code of Good Practice is a good start.

There is no silver bullet. However, more generally trustees should be proactively looking to establish an environment in which members are supported throughout their membership, with focused help at key points such as attaining age 55, and seeking transfers. This should include high quality relevant communication, "personalised" as far as possible. It should also aim to increase member awareness of the trustees' role and responsibilities, so that members understand their actions and motives. There will be a financial cost, but getting the sponsor on board will reinforce the messages.

The pressures on trustees in transfer situations are unlikely to diminish any time soon. However by employing such approaches, trustees can make life more bearable, support their members more effectively and address the transfers challenge.