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Following the April 2015 changes, how should trustees be approaching transfers of defined benefit (DB) rights?

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As ever, trustees and administrators of occupational schemes should ensure that communications and processes meet statutory requirements, and protect members adequately against pension scams. These processes should be reviewed in light of recent developments.

What rights can members transfer?

From April this year members who have rights to DB benefits and flexible benefits (broadly, defined contribution (DC) or cash balance) can transfer these categories of rights separately. So, if a member has a DB benefit and a DC top-up or an additional voluntary contribution (AVC) pot, then systems need to cater for the DB and DC element being transferred independently. Members can transfer the flexible benefits at any point before accessing funds, but the statutory ability to transfer DB benefits ends a year before normal pension age (NPA), as was previously the case. Transfer communications will need to be amended to take account of this. Some schemes are thinking about whether to allow transfers of DB benefits all the way up to NPA. This may require a rule change or exercise of a discretion, which should be addressed before any non-statutory transfers proceed.

Checking the member has taken appropriate advice

For DB transfer requests received after April 2015, where the transfer amount is £30k or more, trustees have to check that the member has received 'appropriate independent advice' before transferring their benefits to acquire flexible benefits. Trustees need to obtain confirmation in a particular form from the adviser, and check the Financial Conduct Authority (FCA) register to ensure the adviser is listed. However, trustees are not responsible for checking what advice was given, what recommendation was made, or confirming whether the member is following that recommendation. Trustees will need to build the necessary information requirements about the need to take advice into their transfer communications.

Are there any other new disclosure requirements affecting DB members?

Not specifically – the new disclosure requirements relating to pension flexibilities are for members with flexible benefits. However care must be taken if, for example, DB members also have a DC entitlement, such as AVCs. In that case, various disclosure requirements regarding flexible benefits (such as a need to signpost Pension Wise) can be triggered, even though the AVC pot may be a small part of the overall benefit. Schemes will need to think carefully about the best way to manage this, and update communications in a way which complies with the legal requirements in all situations, but is also appropriately tailored for members in the context of the pension benefit rights that they have. It won't necessarily be easy to do this well.

Is the due diligence process robust?

Trustees would be wise to review due diligence processes in light of the Code on Combating Pension Scams (published in March 2015), and make sure that processes, scheme checklists and member communications are up to date. It is also a good time to review discharge forms to ensure these contain appropriate warnings and confirmations from the member. The Code contains helpful practical steps for trustees and administrators to follow.

Changes to overseas transfers

There have been recent changes to requirements regarding qualifying recognised overseas pension schemes (QROPS), meaning that these schemes must not pay benefits before 'normal minimum pension age' (currently age 55), save in cases of ill-health. HMRC has written to QROPS asking for confirmation that this is the case. HMRC suspended its QROPS list until 1 July, and this is no longer described as a list of QROPS, rather a list of recognised overseas pension schemes or 'ROPS'.

It would be wise to review due diligence processes for QROPS, even in cases where there are no concerns about pension scams, to make sure the receiving scheme meets the QROPS requirements. The QROPS should be asked questions to confirm this is the case, and satisfactory evidence should be received. HMRC does not set out a specific checklist for this. In cases of doubt trustees and administrators may feel they have little alternative but to ask HMRC for confirmation, although it is not known how long HMRC may take to respond.

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