PASA Consultation Response

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

July
2026

PASA

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Acknowledgments

PASA is grateful to the authors of the Guidance and members of the PASA Industry Policy Committee and their employers.

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About PASA

The Pensions Administration Standards Association (PASA) was created to provide an independent infrastructure to set, develop, guide and assess administration standards.

PASA acts as a focal point and engages with industry and government to create protocols for understanding good administration - but also appreciates there's no one size fits all. PASA develops evidential Accreditation practices allowing benchmarking across and between the industry regardless of how the administration is being delivered.

As well as raising the profile of pension administration generally, PASA focuses on three core activities:

1. **Defining good standards of pensions administration relevant to all providers, whether in-house, third party or insurers**
2. **Publishing Guidance to support those standards**
3. **Being an independent Accreditation body, assessing the achievement of good standards by schemes**

There's no other organisation providing such services across schemes, yet there's a demand for evidence of service quality from scheme trustees, sponsors, administrators, insurers, savers and regulators.

1. Summary

We support the objective of protecting savers from pension scams while improving the transfer experience for legitimate transfers. The current framework has helped trustees, managers and administrators intervene where scam risks are identified, but it's also created unnecessary friction where the risk is low or can be managed more proportionately.

Transfers involve an important balance. Savers should be able to move their pension savings where they have a statutory right to do so. They should also be protected from decisions made under pressure, fraudulent activity and arrangements designed to appear legitimate while exposing them to serious harm. The statutory transfer framework exists for a reason. It shouldn't become a speed test. A quick transfer isn't always a better transfer.

Our response focuses on practical administration issues. In particular, we highlight:

- The need for clear and objective tests where trustees and administrators are expected to exercise judgement
- The importance of aligning legislation, regulatory guidance and operational practice
- The risk of different schemes and administrators reaching different conclusions on similar facts
- The need to avoid unnecessary complaints, referrals and saver confusion
- The practical impact of the proposed 12-month safeguarding guidance exemption
- The need for a clearer and more consistent policy position on incentives
- The importance of keeping the framework responsive to changing scam methods, including the increasing use of AI

We support the proposed removal of the overseas investment amber flag. This is a practical change and should reduce friction where overseas investments are present but aren't, in themselves, an indicator of scam activity.

We also support the broad direction of expanding the First Condition so transfers to low-risk receiving schemes can proceed without unnecessary additional checks. The term 'reputable' needs careful handling. We recommend using 'acceptable' instead which better reflects the operational decision being made. The question isn't whether a receiving scheme is reputable in every sense. The question is whether trustees or managers are satisfied, the receiving scheme is acceptable for the purpose of satisfying the First Condition.

2. Consultation Questions and Responses

Question 1: Do you foresee any issues with the planned wording of the flag in regulation 8 of Annex A?

We support the policy intent behind introducing a red flag where the evidence provided doesn't demonstrate an employment link with the receiving occupational pension scheme. A missing employment link can be a strong indicator a receiving SSAS may be operating outside its legitimate purpose.

From an administration perspective, the key issue is clarity. If the test isn't clear, trustees and administrators will apply it cautiously. This may be appropriate in higher-risk cases, but it could also delay legitimate transfers.

The planned wording should make clear:

- What evidence is expected to demonstrate an employment link
- What happens where the evidence is incomplete, inconsistent or unclear
- Whether the absence of a conventional employment link should always create a red flag
- How trustees and managers should deal with SSASs where there may be legitimate reasons for the employment link to be less straightforward

We recognise not all SSAS arrangements without a straightforward employer link are suspicious. There may be legitimate reasons why the employer link isn't obvious, including business-owner, director or family-business arrangements where employment structures may be more complex. A blanket approach risks catching arrangements which aren't pension scams.

We request clear guidance on the evidence required, including examples of evidence which would normally be sufficient and examples which wouldn't. Without this, the proposed red flag may create inconsistent outcomes and further complaints.

There's also a potential drafting issue. If a red flag only applies where a saver has provided evidence but it doesn't demonstrate an employment link, the regulations and guidance should make clear what happens where the saver provides an incomplete response. An incomplete, inconsistent or unreliable response shouldn't produce a weaker regulatory outcome than clear evidence which fails the employment link test.

Question 2: Are you aware of any emerging concerns, risks or scam activity, such as those arising in SSASs or other pension arrangements, where existing consumer protections or regulatory safeguards may not be sufficient?

We're aware of concerns around the misuse of SSASs, particularly where arrangements involve dormant schemes, unclear employment links, non-standard investments or arrangements designed to present pension liberation activity as legitimate investment activity.

We also see a broader issue. Scam controls based heavily on documentary evidence may become less effective as technology improves. AI can now generate convincing documentation, communications and supporting evidence at scale. This doesn't remove the need for evidence checks, however it does mean the framework should be cautious around relying too heavily on static documents which can be prepared to look credible.

Future protections need to account for:

- Increasingly sophisticated document creation and coaching
- Savers who may have been primed before approaching the transferring scheme
- Cases where the saver is complicit in the transaction but has still been misled or coerced
- Use of non-standard investments to make pension liberation look like legitimate investment activity
- Influence from introducers, advisers or investment promoters sitting outside the regulated perimeter
- Greater visibility and movement of pension pots as the market modernises, including through pensions dashboards

DWP should treat these amendments as one part of a wider anti-scam programme. The framework needs to keep pace with changing scam methods and should be reviewed regularly as AI-enabled scams continue to evolve. This is particularly relevant where transfer controls depend heavily on documentary evidence supplied by the saver or a third party.

Question 3: Do you consider the focus on the employment link to be an appropriate and effective measure for addressing the concerns relating to SSAS transfers?

We agree the employment link can be an appropriate and relevant measure. It can help evidence whether a SSAS is being used for its intended purpose.

The employment link shouldn't be treated as the only meaningful safeguard. It must sit alongside other scam indicators and due diligence checks, including:

- The nature of the receiving arrangement
- The role and status of any advisers or intermediaries
- The proposed investment approach
- The presence of non-standard or high-risk investments
- The saver's behaviour and understanding
- Whether the arrangement appears to have been established or used to facilitate the transfer
- Whether there are signs of coaching, pressure or incentives

We also encourage DWP to consider whether stronger governance requirements for SSASs, including professional trustee requirements, may deliver a more proportionate and sustainable control environment. Given the relatively small number of affected transfers, strengthening governance within receiving schemes may prove more effective than introducing additional evidential tests.

A professional trustee requirement wouldn't remove all risk. It could provide a more objective and ongoing control than relying only on the transferring scheme to assess employment-link evidence at the point of transfer. It may also better target the area of concern without creating unnecessary friction for legitimate transfers. Any approach must avoid two poor outcomes:

- Allowing fraudulent SSAS transfers to proceed because paperwork has been prepared to satisfy a narrow test
- Stopping legitimate SSAS transfers where other safeguards and facts show the arrangement is credible

The framework should support informed trustee judgement, not replace it with a single factor.

Question 4: Do you agree with this proposed approach, including the use of a non-exhaustive list of factors? If so, we would welcome your views on what those factors should be. We also welcome your input, including any evidence-based views, on its effectiveness and practical workability.

Consistent with our view that the framework should support informed trustee judgement, we support the objective of broadening the First Condition. The current First Condition is too narrow. It means additional checks can be required even where trustees and administrators have no real concern about the receiving scheme.

This is a positive direction. It should reduce unnecessary friction for legitimate transfers, reduce pressure on MaPS safeguarding appointments and improve saver experience.

The proposed wording should be changed. We recommend replacing 'reputable' with 'acceptable'. The word 'reputable' creates practical and legal difficulty. It sounds like a judgement on the receiving scheme's standing, rather than an assessment of whether the transfer can proceed under an objective framework. This may create scope for challenge from receiving schemes, advisers and savers.

'Acceptable' better reflects the operational decision being made. The question is whether trustees or managers are satisfied, on the balance of probabilities, the receiving scheme is acceptable for the purpose of satisfying the First Condition. This avoids implying a general value judgement about the receiving scheme.

We broadly agree with the factors proposed by DWP and recognise the importance of providing trustees and administrators with a framework for identifying acceptable receiving schemes.

The success of this proposal will depend less on the factors themselves and more on how they can be applied consistently in practice. The industry doesn't need a long list of considerations. It needs a framework administrators can apply consistently and defend with confidence.

Any factors adopted should therefore be objective, capable of being evidenced and supported by clear guidance. Otherwise different trustees, administrators and advisers may reach different conclusions on the same receiving arrangement, resulting in inconsistency, complaints and avoidable delays. In addition to the factors already proposed, DWP may wish to consider:

- Whether the receiving arrangement has appropriate governance or independent oversight
- Whether transfers to the arrangement have previously completed without concern
- Whether the arrangement is subject to recognised regulatory supervision

The focus should be on creating a framework which improves operational consistency rather than increasing the volume of subjective judgement.

Several of these factors need strong guardrails:

- **'Existing relationship'** should mean the transferring scheme's operational relationship or experience with the receiving scheme. It shouldn't mean the saver's personal employment or membership relationship. Otherwise, it risks confusion with the employment link test
- **'Nature and risk profile of investments'** must also be handled carefully. Administrators can identify categories of risk and request information, but they're not generally investment specialists. The framework shouldn't require administrators to make investment judgements beyond their role and expertise
- **'Prior warning flags or regulatory concerns'** also needs clarity. There should be an identifiable source of truth. If DWP expects trustees and administrators to rely on regulatory concerns, they need to know where those concerns are recorded and how regularly they should be checked
- **'Transparency around fees and charges'** should also be defined. The issue should be whether the fee structure is clear and not an indicator of scam risk. It shouldn't turn into a subjective assessment of whether the saver fully understands every aspect of the receiving scheme's charges

Operationally, many administrators use some form of clean list or lower-risk list. We're not suggesting DWP should mandate a central clean list. It should recognise the operational reality that many administrators already use one. Schemes and administrators need to know:

- When they can rely on prior experience with a receiving scheme
- How often any list or lower-risk assessment should be reviewed
- What evidence should support inclusion
- What should trigger removal or enhanced due diligence

- How trustee-specific risk appetite interacts with administrator-wide processes

Without this, the new First Condition may not achieve its intended effect. Trustees and administrators will continue to apply cautious processes to avoid future challenge. This may be best achieved through coordinated guidance and good practice developed with DWP, TPR, FCA, MaPS and industry stakeholders. The aim should be practical consistency: helping administrators understand what evidence can reasonably be relied on, when further due diligence is needed and how decisions should be recorded.

Question 5: Do you foresee any issues in the practical implementation of the amended regulations?

Yes. We identify several practical implementation issues.

Sufficient implementation time will be essential

DWP should provide sufficient lead time before the amended regulations come into force. Administrators will need time to update processes, member communications, training material, decision-making templates and supporting controls. They may also need to seek advice or further engagement on areas where the final regulations or supporting Guidance leave room for judgement.

The success of these changes will depend not only on the quality of the final regulations but also on their consistent implementation across the industry. Providing adequate implementation time will help reduce short-term inconsistency, operational risk and avoidable member confusion.

The 12-month safeguarding Guidance exemption needs to be built into administration processes

The proposed exemption is sensible in principle. Repeated appointments can add burden without improving saver protection. Administrators will need to build this into transfer processes.

Administrators will need to ask early in the process whether the saver has already received relevant guidance. They will also need to establish whether the guidance related to the same transferring scheme and the same receiving arrangement rather, than treating the previous appointment as a simple blanket exemption. If the previous guidance related to a different transfer, different receiving arrangement or different risk factor, it may not provide meaningful protection.

DWP should provide standard wording or a model declaration to support consistent implementation.

Guidance may not cover all relevant risks

Safeguarding guidance may focus on the reason for referral. If a saver was referred because of one risk factor, the guidance may not meaningfully cover a different risk arising on a later transfer.

A 12-month exemption should therefore be carefully constrained. It shouldn't create a route where a saver can satisfy the requirement once and rely on this appointment for a materially different transfer risk.

Incentives remain a major unresolved issue

We're concerned the consultation doesn't resolve the practical problems caused by the incentives red flag.

Incentives continue to create a difficult and inconsistent area. Not all incentives present the same level of risk. Some may indicate scam activity. Others arise routinely in legitimate transfer exercises. The current position can lead to red flags, non-statutory transfer routes, saver confusion and complaints.

DWP should adopt a presumption that incentives are permissible unless there's evidence they're being used to create scam risk or consumer detriment. Incentives exist in many legitimate transfer exercises and commercial arrangements. The existence of an incentive, in isolation, shouldn't be enough to trigger additional friction within the transfer process.

The focus should instead be on identifying those incentives which create a genuine risk indicator, such as incentives linked to pension liberation, inappropriate pressure or access to benefits before the normal minimum pension age.

The current middle ground leaves too much uncertainty. Trustees and administrators will continue to seek legal advice and take risk-averse positions. This may protect schemes, but it won't improve saver experience.

Our preferred approach is for DWP to define when an incentive is a genuine scam indicator. There's a meaningful difference between a saver being pressured by an introducer offering cash access or cashback from pension savings, and a mainstream receiving arrangement offering an ordinary commercial promotion. The framework should recognise the difference.

If DWP doesn't address this in the regulations, it should do so through clear guidance. Leaving the issue to trustees, administrators and legal advisers will preserve the current inconsistency. The current position also risks undermining confidence in the framework. Savers, trustees and administrators can all reach the same conclusion that a transfer is legitimate yet still find themselves navigating additional steps because an incentive exists somewhere within the process. This creates friction without necessarily improving protection.

The framework mustn't create avoidable complaints

There's a clear risk of complaints where different administrators reach different decisions on the same receiving scheme. Savers may not understand why one transfer proceeds while another is delayed or refused. This may lead to more complaints and more referrals to the Pensions Ombudsman.

This risk increases if 'acceptable' isn't supported by clear guidance or if the factors are too subjective.

The transfer process needs an honest policy narrative

Some delay is built into the statutory process for a reason. Transfers can involve complex checks, valuable pension rights and irreversible harm if a scam succeeds.

We support improving transfer processes. We support reducing unnecessary friction. However, the policy narrative shouldn't suggest all delay represents poor administration. Some friction is an intentional safeguard. If DWP wants a degree of friction in higher-risk transfers, it should say so clearly. This would help trustees and administrators explain the position to savers.

A smoother system should mean unnecessary checks are reduced. It shouldn't mean necessary due diligence is rushed.

Question 6: Do you foresee any issues with the proposed wording of the amendments to the regulations, as detailed in Annex A?

Yes. We identify three main wording issues.

1. 'Reputable' should be replaced with 'acceptable'

For the reasons set out in our response to Question 4, we believe 'acceptable' is a more appropriate term than 'reputable'. The legislation should support consistent operational decision-making rather than requiring trustees and administrators to make subjective assessments of a receiving scheme's standing.

2. The employment link red flag should avoid gaps

The wording should clearly address:

- No response
- Incomplete response
- Evidence provided but not sufficient
- Evidence which appears complete but is inconsistent or unreliable

Incomplete, inconsistent or unreliable evidence shouldn't create a weaker regulatory outcome than clear evidence which fails to demonstrate the employment link.

3. The amended First and Second Condition wording should align with operational practice

The First Condition should be satisfied only where the trustee or manager has enough evidence to reach the required level of confidence. Where confidence isn't reached, the Second Condition should apply.

DWP should ensure the amended wording doesn't imply a more complex or burdensome assessment than intended. If trustees and administrators are expected to make these decisions at scale, the drafting must support efficient, repeatable processes.

DWP should clarify how the amended regulations apply to transfer requests already in progress when the changes come into force. Without clear transitional provisions, schemes may take different approaches to cases already part-way through due diligence, which could create inconsistency, delay and member complaints.

3. Closing comments

We support DWP's aim of strengthening saver protection while reducing unnecessary friction in legitimate transfers.

The proposals are a helpful step, particularly the removal of the overseas investment amber flag and the widening of the First Condition. The success of the changes depends on practical clarity.

The most important areas to resolve are:

- Replacing 'reputable' with 'acceptable'
- Aligning the regulations with clean list and lower-risk list practice
- Setting objective factors administrators can apply consistently
- Clarifying the employment link evidence test
- Considering whether professional trustee requirements could address SSAS risks more proportionately
- Addressing the unresolved incentives issue
- Ensuring the 12-month safeguarding guidance exemption doesn't create gaps
- Recognising AI as an emerging risk in the way evidence, communications and saver explanations may be created or tailored
- Recognising some transfer friction is an intended protection, not an administrative failure

We look forward to continuing to work with DWP, TPR, MaPS and industry stakeholders as the regulations and supporting Guidance are finalised.

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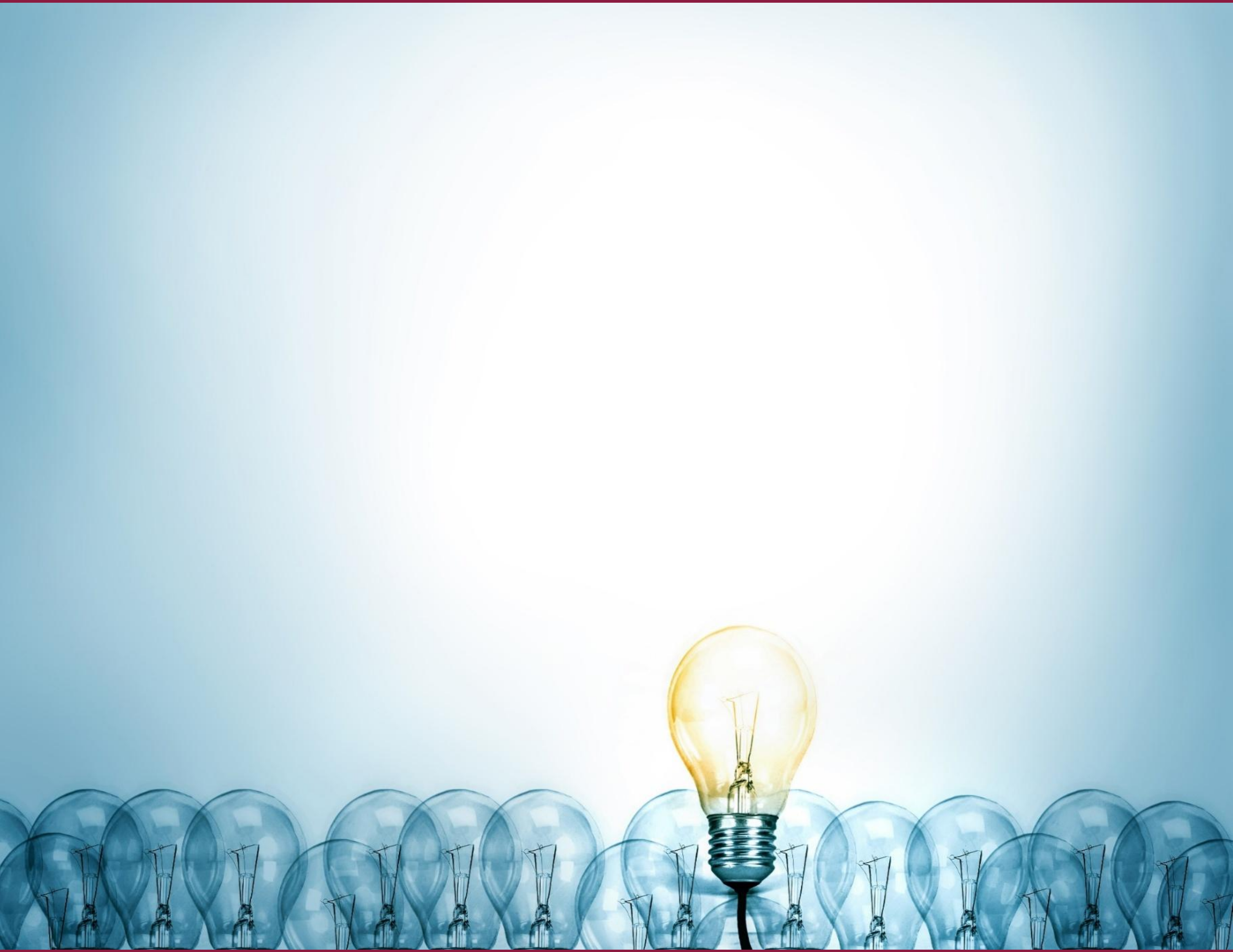

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