



Local Pension Board

Date: 19th December 2019

Transfer Out Procedure (for information and discussion)

Report of the Head of Pensions

Purpose of report

1. This report provides details on the Fund's approach to member requests to transfer their benefits to another registered pension scheme.
2. Officers will be asking Pensions Committee to approve a new transfer out procedure in February 2020, and the Board is being asked for its views on the proposed new procedure prior to this going to Committee.

Background

3. In April 2015, the Government introduced greater flexibility in the way individuals aged 55 and over can access any defined contribution pension savings they may have. The additional flexibilities were referred to as “Freedom and Choice”.
4. The introduction of “Freedom and Choice” gave rise to an increase in interest from members to transfer out of the Fund to defined contributions schemes so that it was easier for members to access their pension benefits.
5. Whilst “Freedom and Choice” has seen a notable increase in transfers to defined contribution schemes, it has, unfortunately, been accompanied by a large increase in ‘pension liberation fraud’. The Fund takes the risks of pension liberation fraud very seriously and undertakes a vigorous due diligence process to review transfer out requests.
6. In undertaking its due diligence, the Fund needs to ascertain whether a member has a ‘statutory right to transfer’ and assess the risks of pension liberation fraud.

Statutory Right to Transfer

7. Members of a pension scheme are generally able to transfer their accrued pension benefits to another registered pension scheme where:
 - it is permitted in the governing documents of the respective schemes; and / or
 - a member has a “statutory right to transfer” as prescribed in the Pension Schemes Act 1993.
8. For many personal pension schemes, transfers out are often expressly permitted in the Trust Deed and Scheme Rules. However, the LGPS is not a trust based personal pension scheme, but rather a statutory scheme with its ‘governing provisions’ largely set out in legislation.
9. In respect of transfers out of the LGPS, Regulation 96 of the LGPS Regulations 2013 (as amended) effectively requires a member to have a “statutory right to transfer” under the Pension Schemes Act 1993. Consequently, bullet points above are intrinsically linked when dealing with transfers out of the LGPS.
10. Determining whether a member has a statutory right to transfer is a time consuming process and, amongst other things, involves the review of the governing documents of the receiving scheme. The governing documents usually include Trust Deed(s) and Scheme

Rules. It is only from considering these documents that a conclusion can be reached as to whether the legal tests set out in the legislation are met.

Pension Liberation Fraud

11. Pension liberation fraud is on the rise in the UK and can result in people losing some, or all, of their accrued pension benefits. These benefits have often been accrued over many years and the loss of these benefits can have a devastating impact on people and their retirement plans.
12. In addition to losing some, or all, of their accrued pension benefits, victims of pension liberation fraud are also at risk of significant tax implications for any payments considered to be unauthorised under the Finance Act 2004. The tax liability may be up to 55% of an unauthorised payment. In essence, this means the tax liability could be up to 55% of a person's cash equivalent transfer value ("CETV").
13. The Fund takes the risk of pension liberation fraud very seriously. An assessment of the risks is taken in all non-club transfers in accordance with the industry guidance. Any red flags are identified in the due diligence report and the member is informed accordingly.

Risks to the Fund in dealing with transfers out

14. The risks in dealing with transfers out are not solely reserved for members; there are also a number of risks for the Fund.
15. The first risk is one of a financial nature for the loss of the CETV, either in whole or in part. When a ceding scheme has not undertaken the appropriate level of due diligence, that scheme is at risk of having to reinstate some or all of a person's pension benefits that have been lost. Should this happen, the ceding scheme risks reputational damage as well as financial loss.
16. Even when a ceding scheme has undertaken the appropriate level of due diligence, and consented to a lawful transfer, that scheme can still be found to have breached a duty of care to the member if it has taken too long to approve the transfer request.
17. Whilst the legislation allows a ceding scheme 6 months from the guarantee date to complete a transfer out request, the Pensions Ombudsman has made it clear in a number of judgements that schemes are not permitted to take their time and must act promptly.
18. Delay has been held to be maladministration and ceding schemes have been ordered to make compensatory payments to members in such cases. Such payments do not generally exceed £1,000.

19. In addition to payments for maladministration, the Pensions Ombudsman may make an award to compensate a member for any financial loss they have incurred due to delay by the ceding scheme. Such loss would likely be from missed investment opportunities / returns and the value of such an award may be notable.

The Fund's current approach to transfers out

20. For a number of years the Fund has had a very rigorous and thorough approach to transfers out. This involves referring all non-club transfers to Legal Services to determine:
- whether a transfer is a 'recognised transfer' (i.e. a transfer to another scheme registered with HMRC);
 - whether a member has a statutory right to transfer;
 - whether the member has received the appropriate financial advice; and
 - the risks of pension liberation fraud.
21. The approach taken to date has served the Fund well and mitigated the risks connected with transfers out for both the Fund and its members. However, the current approach is laborious and a little inefficient. Additionally, the industry guidance has recently been updated and now seems an appropriate time for the Fund to update its transfer out procedure.

Reasons for changing existing approach

22. The existing approach of managing non-club transfer out requests is not broken and does a good job at mitigating risks for both the Fund and members. Notwithstanding this, the detailed approach taken by the Fund can be inefficient and causes frustration for some members.
23. The frustration of some members is not assisted by a lack of understanding at receiving schemes and financial advisors about the transfer out process. Outside of the LGPS, most transfers that occur are from DC scheme to DC scheme where the process is very straightforward. In such cases, transfers are generally permitted between registered schemes and the only safeguard in place is to ensure the receiving scheme is registered with HMRC. Such a simplistic approach is not legally permissible in the LGPS where members are only permitted to transfer if they have a statutory right to transfer.
24. Whilst we should not be driven to change our procedure simply to appease member frustration, we are mindful that our existing approach can be a little cumbersome and inefficient.

25. Officers believe that our approach can be made more efficient and streamlined, without compromising governance standards in our diligence. We have therefore reviewed our procedure to see if transfers out can be handled more efficiently, but at all times ensuring there is no deterioration in the quality of due diligence.

Proposed new approach to transfers out

26. The Fund has produced a new procedure document to govern transfers out. This is an evolutionary progression of the existing approach, but factors in new industry guidance, legislative changes, court judgments and decisions of the Pensions Ombudsman. A copy of the proposed new procedure document is attached as Appendix 1.

27. As stated above, the new procedure is more evolutionary in nature rather than revolutionary. This is considered the most appropriate approach as the Fund's existing procedure works reasonably well, but needs to be brought up-to-date to incorporate recent changes and be made more efficient.

28. The main changes in the new procedure are as follows:

- Enhanced engagement with the member early in the transfer out process.

This is encouraged in the industry guidance and should help the member consider the risks of pension liberation fraud early in the process;

- Creation of a Pension Scam Liberation Questionnaire and for this to be sent to the member at the same time as the standardised transfer out forms.

Previously the Fund has sent standard transfer forms to a member for completion. Once the forms are returned the case is referred to Legal Services who then write to the member with a list of questions to assess the risks of pension liberation fraud.

This two stage approach to asking questions often causes frustration for members and delays the process. We therefore think it is helpful for the Pension Scam Liberation Questionnaire to be sent to members at the same time as the other forms so that all of the information can be obtained at the same time. This should help reduce member frustrations and make the procedure more efficient;

- The introduction of an 'Approved List'.

Previously, detailed due diligence has been undertaken in all non-club transfer cases. Many transfers out are to a relatively small

number of receiving schemes. Consequently, this results in a lot of duplication. The Head of Pensions, under delegated powers, recently authorised the introduction of an Approved List for schemes that are considered to be safe. The Approved List is reviewed regularly and schemes can only be added to the list with the approval of the Principal Solicitor – Pension Fund Team.

Transfers to schemes on the Approved List are subject to 'light touch' due diligence, provided no changes have been made to the governing documents of those schemes since they were last subjected to a full due diligence. If changes have been made to the governing documents of the Receiving Scheme, it will be removed from the Approved List and again subjected to full due diligence.

29. The above changes should make the due diligence process more efficient, but, very importantly, ensure there is no deterioration in the governance standards the Fund operates in respect of transfers out.

Next steps

30. It is intended to take the transfer out procedure to Committee in February for formal approval. However, prior to doing so, the Board's comments are sought on the new procedure.

Recommendation

31. The Board is asked for its comments on the new Transfer Out Procedure.

Tyne and Wear Pension Fund

Administered by South Tyneside Council

Transfer Out Procedure (Non-Club Transfers)

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Introduction

Members of a pension scheme are generally able to transfer their accrued pension benefits to another registered pension scheme where:

- (a) it is permitted in the governing documents of the respective schemes; and / or
- (b) a member has a “statutory right to transfer” as prescribed in the Pension Schemes Act 1993.

For many personal pension schemes, transfers out are often expressly permitted in the Trust Deed and Scheme Rules. However, the LGPS is not a trust based personal pension scheme, but rather a statutory scheme with its ‘governing provisions’ largely set out in legislation.

In respect of transfers out of the LGPS, Regulation 96 of the LGPS Regulations 2013 (as amended) effectively requires a member to have a “statutory right to transfer” under the Pension Schemes Act 1993. Consequently, (a) and (b) above are intrinsically linked when dealing with transfers out of the LGPS.

In dealing with a transfer out of Tyne and Wear Pension Fund and / or Northumberland County Council Pension Fund (the term “**Fund**” will hereafter apply to either) it is necessary for officers to determine whether:

- (1) the transfer is a ‘recognised transfer’;
- (2) the member has a statutory right to transfer out of the LGPS and is the Receiving Scheme permitted to receive the transfer in;
- (3) the member received appropriate independent advice (if applicable); and
- (4) there is considered to be a material risk of pension scam liberation?

This Procedure Note sets out the process to be followed in dealing with a CETV quote request and a transfer out of the Fund request. This document has been prepared having regard to the overriding legislation, Combating Pension Scams: A Code of Good Practice, Version 2:1; 10th June 2019, relevant court judgements and decisions of the Pensions Ombudsman.

Procedure Note

A member of the Fund is generally only entitled to a Cash Equivalent Transfer Value (CETV) quote once in every 12 month period. The Head of Pensions, or the Principal Pensions Manager, may authorise a second quote to be provided within the 12 months period when there are compelling circumstances to justify the second quote.

There are two key objectives that the Fund will generally have with regards processing transfer requests:-

1. To make only a valid transfer; and
2. To help put the member in a position to make an informed choice in relation to a valid transfer where there are suspicious circumstances.

Where a member requests a transfer of their accrued pension benefits there are a number of steps in the process that must be followed. These are as follows:

Stage 1: Initial telephone contact to Communications Team

In most cases, an early telephone call can help identify 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.

Questions to be asked by the Communications Team during the initial conversation with the member include:-

1. Is the CETV quote needed for divorce purposes?
2. Does the member have another record that is pensioner type status?
3. Does the member want to start the CETV enquiry process?
4. Who is requesting the CETV (i.e. is this the member or an IFA)?
5. What are they hoping to achieve through the transfer that they can't in the LGPS?
6. Do they know they can now access their pension from age 55?
7. Do they have any other LGPS benefits? If so, are they aware they will need to transfer out all of these?
8. How did they become aware of the Receiving Scheme? Have they been approached by a third party or cold caller?
9. Have they been encouraged to make a quick decision about transferring their pension?
10. Do they have an independent financial advisor?
11. Are they aware that they will be unable to transfer out their benefits if they are within 12 months of their Normal Pension Age? (NB could be 60 for female with GMP or a Pre96 Leaver)

Each question will be mandatory and if any warning flags are raised by the responses a drop down information box will appear to help guide the operator and enable them to give the best possible advice to the member at the earliest opportunity.

Stage 2: Operations Team to send out to the member a generic letter advising the member to obtain appropriate advice and enclosing the following documentation:-

- CARE70
- Freedom of Choice – Q&A leaflet for LGPS members
- Scamproof your savings leaflet (Scorpion guidance)

Once the Completed CARE70 is received it must be checked that it is from the member and signed by them (scanning team to confirm if the signature is an original). The CARE70 must not have been sent in via email or fax.

Stage 3: Following confirmation of the completed CARE70, an acknowledgment letter is issued to the member to provide them with additional information. The CETV is then calculated. Operations Team send out Member's Transfer Request Form; Advice Confirmation Form; New Scheme Administrators/ Trustees Transfer Payment Request. The Operations Team will also send out an additional Pension Scam Liberation Questionnaire. (Appendix 1).

Stage 4: Once the forms referred to in Stage 3 are returned, the Operations Team will review the information provided. If any information is missing, including the governing documents for the Receiving Scheme, the Operations Team will seek to obtain this information.

Once the Operations Team is satisfied that they have full information, a referral will be made to the Principal Solicitor via email and a process will be started on UPM for a full due diligence review. A letter will also be sent out by the Operations Team to members within 10 working days confirming that paperwork has been received and is being reviewed as part of due diligence.

Stage 5: The Principal Solicitor – Pension Fund Team will insert details of the transfer out into a spreadsheet to monitor the legal deadlines. The case will then be allocated within the legal team.

Once allocated within the legal team, the appropriate person will pick up the case from UPM and put notification of this on the system to alert the Communications Team.

The legal team will review the paperwork provided to ascertain whether:

- (i) the transfer is a "recognised transfer";

- (ii) the member has a statutory right to transfer out of the LGPS and whether the Receiving Scheme is permitted to accept the transfer in; and
- (iii) the member has received appropriate independent advice (if applicable);

For pension schemes that are well known to the Fund, and have been previously subjected to thorough due diligence, the legal team operates and maintains an 'Approved List' (see Appendix 3). Schemes contained in the 'Approved List' will be subject to light touch due diligence. For such cases, the legal team will still need to verify that the governing documents for the Receiving Scheme remain unchanged since the Receiving Scheme was approved and added to the Approved List. If the governing documents have changed then the legal team must undertake full due diligence rather than the light touch approach.

The legal team will also undertake an assessment of the risks of pension scam liberation and check the Receiving Scheme remains registered with HMRC (evidenced through an up-to-date HMRC website screenshot).

Once the due diligence process has been completed, a written report will be sent to the Head of Pensions and Principal Pensions Manager with a recommendation as to whether the transfer out should be authorised.

Stage 6: The Head of Pensions and / or the Principal Pensions Manager will consider the report from the legal team and make a decision on whether or not the transfer out should be permitted.

Stage 7: Once the decision has been made at Stage 6, the legal team will write out to the Member informing them of the decision. If the transfer out has been approved, the member will be sent a Final Instruction Sheet / Form of Discharge confirming that they do wish to complete the transfer out of the Fund.

Stage 8: Upon receipt of the Final Instruction Sheet / Form of Discharge, the legal team will request that payment of the CETV is made to the Receiving Scheme. This will be communicated by way of email and through completion of the process on UPM. Involvement of the legal team will end at this stage.

Stage 9: The Operations Team will aim for payment of the CETV to the Receiving Scheme to be made within 10 working days of being requested.

Notwithstanding the above timescale, the Operations Team will ensure that payment is made within the statutory six months' timescale.

Once payment has been made, the Operations Team will write to the member and the Receiving Scheme confirming payment.

UPM will be updated to reflect that the member has transferred out their benefits.

Appendix 1: Pension Liberation Questionnaire

Pension Scam Liberation Questionnaire

As you may be aware, ‘pension liberation fraud’ is on the increase in the UK, and the Fund takes this matter very seriously. Pension liberation fraud can result in people losing some, or all, of their accrued pension benefits which have often been accrued through many years of hard work. Pension liberation fraud may also result in significant tax implications for victims.

South Tyneside Council takes pension liberation fraud very seriously. As part of our due diligence process, we would request you to complete this questionnaire so that an assessment can be undertaken as to the risks of pension liberation fraud in relation to your transfer request.

South Tyneside Council is unable to provide you with full assurance that you will not be the victim of pension liberation fraud; however, completion of this questionnaire will assist the Fund in its due diligence process which may help to mitigate the risks.

To progress our due diligence, please can you answer the following questions:

1.	Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme or its administrators, as a result of transferring your benefits?	
2.	Did the receiving scheme/advisor or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?	
3.	Have you been told that you can access any part of your pension benefits under the receiving scheme before age 55, other than on the grounds of ill health?	
4.	Have you been told that you will be able to draw a higher tax-free cash sum as a result of transferring?	
5.	Have you been informed by the new Scheme about the potential tax consequences that could be incurred by this transfer?	
6.	Have you been promised a specific/guaranteed rate of return?	
7.	Have you been informed of any investment opportunity, particularly overseas one?	
8.	Do you understand the nature of the underlying investments that you are planning to transfer into and do you know the risks they involve?	
9.	Can you tell us how the transfer payment will be	

	invested? (i.e. through high or low risk investments)	
10.	Are you transferring to a newly established scheme?	
11.	Do you know what fees will be charged and how these will affect the value of your investments over time?	
12.	What are you hoping to achieve through your transfer that you can't within the LGPS?	

Signed: _____

Dated: _____

Appendix 2: Form of Discharge

South Tyneside Council

Providing pension services for

Tyne and Wear Pension Fund and **Northumberland County Council Pension Fund** (the term **Fund** hereafter refers to either pension fund individually)

FORM OF DISCHARGE

I, _____ hereby:

Confirm that I have considered the information provided by South Tyneside Council on behalf of the Fund and hereby confirm that I wish to proceed with my transfer request, from the Fund to the
' _____ '.

I confirm the following:-

- I have been advised by the Fund to seek and obtain independent financial advice from a financial advisor authorised by the FCA.
- I confirm I was asked to contact The Pensions Advisory Service for free, impartial guidance on the risks of pension scams.
- 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 that if I access any of the funds before the age of 55 (except in 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 South Tyneside Council and / or Northumberland County Council in respect of any additional tax and/or sanction charges that may be levied upon them in relation to this transfer.
- Fully discharge South Tyneside Council and / or Northumberland County Council from their obligations to provide benefits to me or my beneficiaries if the transfer is paid.
- Hold South Tyneside Council and / or Northumberland County Council 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) resulting from my decision to proceed with my transfer request.
- Confirm that any information provided by me or about me by the Receiving Scheme has been verified by me as factual and correct and that neither South Tyneside Council nor Northumberland County Council are in any way responsible for any quotation or any literature issued by the Receiving Scheme.

Signed

Print Name

Date

Appendix 3: Approved List

The Head of Pensions has authorised the introduction of an Approved List for transfers to certain pension schemes.

A registered pension scheme may be added to the Approved List, at the discretion of the Principal Solicitor – Pension Fund Team, when it has been thoroughly investigated on several occasions and is considered to meet the requisite legal criteria for a member to have a statutory right to transfer and is considered to be low risk for pension scam liberation purposes.

When transferring to a pension scheme on the Approved List it will not be necessary to undertake full due diligence and a ‘light touch’ approach may be taken. This is subject to there being no changes to the governing documents of the Receiving Scheme since the scheme was added to the Approved List and the Receiving Scheme continuing to be registered with HMRC¹. If changes have been made to the governing documents of an Approved List scheme then it is to be removed from the Approved List until it has been subject to full due diligence and the insertion of the scheme to the Approved List has been approved by the Principal Solicitor – Pension Fund Team.

The Approved List will be reviewed by the legal team on a quarterly basis.

A copy of the Approved List can be requested from the Legal Team.

¹ The legal team must confirm whether any changes have been made to the governing documents of the Receiving Scheme and check the HMRC registration in all cases.

Transfer Out Procedure

The following is a list of the background papers (excluding exempt papers) relied upon in the preparation of the above report:

Background Paper	File Ref:	File Location
TV out procedure file		Legal Services, South Shields Town Hall