Combating Pension Scams:

A Code of Good Practice

Version 2.1: 10 June 2019

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.

Foreword by the Minister for Pensions and Financial Inclusion

People's savings are still being targeted and stolen through elaborate hoaxes, leaving them facing retirement with a limited income and little opportunity to build up savings again. While it is difficult to be certain about the true scale of the problem, we can be certain about the devastating effect scams can have on hard working people and their future in retirement.

The Government is committed to protecting people from pension scams and pursuing those who perpetrate pension scams wherever possible. We established Project Bloom, a cross-government taskforce that brings together law enforcement, government and industry to share intelligence, raise awareness of scams through communication campaigns, and take enforcement action where appropriate. I am pleased to say that intelligence sharing has led to a number of successful criminal convictions.

We implemented a ban on pensions cold calling earlier this year, which will cut off a key route used by scammers to target their victims. We also introduced new, tougher rules to stop scammers opening fraudulent pension schemes in Finance Act 2018. Following the roll-out of the master trust authorisation regime in 2018-19, we plan to legislate to prevent the transfer of money from occupational pension schemes into fraudulent ones.

It is also essential to make sure people know the risks and understand that if something seems to be too good to be true, then it probably is. We got this message across to the country last year as part of our joint awareness campaign, in conjunction with the Pensions Regulator and Financial Conduct Authority. The campaign was hugely successful with one person every 27 seconds visiting the Scam Smart website to find out what to look out for. We were also able to warn 370 people who called the Scam Smart service that the firm they were talking to was unauthorised. This helped them keep their money safe and stopped an estimated £33 million from falling into the wrong hands.

This year we will do more to help people arm themselves with the information they need. Government sponsored services delivered by Pension Wise, the Money Advice Service and The Pensions Advisory Service, have come together as the Money and Pensions Service. Bringing these services together under one organisation will give people a single place to turn to when they need to get answers about their pensions and money.

The Government also introduced requirements in the Financial Guidance and Claims Act 2018 to ensure that when an individual seeks to access their defined contribution pension pot, that they are: referred for guidance; receive an explanation of the nature and purpose of that guidance, and before proceeding with an application, subject to any exceptions, schemes must ensure that members have either received guidance or have opted out.

I have followed the work of the Pension Scams Industry Group (PSIG) with interest and have been pleased to note the success of the 2015 industry Code of Good Practice in setting out and encouraging good due diligence that has protected countless individuals from harm. In order to respond to the changing market, the PSIG, made up of volunteers from most sectors of the pensions industry has updated its voluntary Code.

This updated guidance will be a vital tool in helping keep pace with the evolving models used by scammers and in aiding our efforts to protect pension savers from scams. I therefore warmly welcome this update to the voluntary Code and commend it to the industry.

Guy Opperman MP

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

10 June 2019

Table of Contents

1. Summary of key changes to the Code from Version 2

1. The Cold Calling ban
2. TPR/FCA ScamSmart campaign and TPR Threat Assessment update
3. Money And Pensions Service (MAPS) reference
4. TPO determinations update and implications
5. The rise of claims management firms
6. FCA Letter “Managing the risks of Defined Benefits to Defined Contribution transfers”
7. FCA-TPR-TPAS joint protocol
8. PSIG’s Scams Survey Pilot 2018
9. Revised Action Fraud reporting guidance
10. Additional case studies

2. Introduction

Pension scams are damaging to individuals, to pension schemes and their providers, and to society. Scheme members are easily tempted by such offers, but many of those who are taken in find themselves transferring their secure benefits to dubious and risky unregulated investment structures, many of which are based overseas. Layers of fees or commissions are typically deducted from the funds and transferees may be subject to tax penalties which they had not understood, leaving transferees with substantially reduced benefits for retirement. In some cases, the funds are simply stolen.

Pension scams rely on deception and misleading people about investment risks and returns as well as taxation. By their nature, offers made seem attractive and people can be taken in by them. Scammers also spread misinformation about the motivation of trustees, providers and administrators who try to explain the risks of such transfers. The individual may have a statutory right to transfer, which takes no account of the possibility that the transfer may, with hindsight, prove to be unwise, but it is the trustees and providers who must determine that the receiving scheme is one which they are lawfully able to transfer to. They have a duty to act in the interests of all scheme members, including the ones requesting a transfer to another arrangement. There is no magic bullet, so judgments must be made, balancing legal rights and risks and trustees and providers must contend with such conflicts on a daily basis. Where there is doubt, trustees should ensure that they take sufficient time to perform reasonable due diligence, without refusing to carry out or unduly delaying a transfer to a valid arrangement.

In 2015, the pensions industry developed a voluntary Code of Good Practice, written by a group made up of the key stakeholders, including trustees, administrators, legal advisers and insurers. This Code set out suggested due diligence steps to take to help identify whether a receiving scheme is one to which a transfer payment should be made. We are pleased to observe that all providers, schemes and reputable advisers, when asked, confirm that they have adopted the principles of the Code as part of their due diligence processes. PSIG has added a space on its website, www.combatingpensionscams.org.uk, for schemes and providers to demonstrate that they have adopted or adapted the due diligence practices set out in the current version.

The Code has been updated to this version 2.1 to reflect recent regulatory and legislative changes as well as the evolving nature of pension scams. Most of the Code remains unchanged. As some regulatory changes have not yet been put in place, we anticipate the publication of Version 2.2 within 12 months and will take the opportunity to further improve the ease of use of the Code at this revision.

The Code relates to due diligence in combating pension scams, but many scams are perpetrated on savings after they have been legitimately cashed in from pension schemes and therefore go beyond the current scope of the Code and outside of any protection available from the pension scheme. However, this Code serves to raise awareness of this problem and encourage communication with scheme members before they take a transfer, to ensure they are aware of the risks of investing their pension monies in unsafe investment schemes.

The June 2019 (v2.1) Code, which follows, has again been reviewed by a wide group of industry bodies and organisations to ensure broad acceptance and encourage widespread adoption of its principles. The reviewing organisations and the members of the Industry Group are shown elsewhere in the document.

Status of the Code of Good Practice

- The Code of Good Practice is voluntary and sets an industry standard for dealing with requests by members for transfers from a UK registered pension scheme to another UK registered pension scheme or Qualifying Recognised Overseas Pension Scheme (QROPS).
- The Code is not a statutory code.
- The Code does not replace or override existing requirements or guidance issued by regulatory bodies on transfers and pension scams.

The Code is intended for use by trustees, administrators and providers and suggests industry standard due diligence to follow when considering a transfer request. There has been some tacit support for the due diligence set out in recent cases determined by the Pensions Ombudsman, for which we are grateful. The legislation relating to transfers is not prescriptive as to due diligence that trustees/providers should carry out on transfer applications, although a recent case, described later in this document sets the minimum bar as the Pension Regulator's guidance introduced in February 2013, in its Scorpion campaign.

This Code is intended to help those involved in the administration of registered pension schemes to assess members' transfer requests. The Pensions Regulator (TPR), and members, expect 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.

Contents of the Code of Good Practice

The Code covers:

- Standard information/evidence required by the transferring scheme to enable a transfer to proceed with reasonable assurance that it should not result in a pension scam.
- Additional information to consider when dealing with transfers to a Self-Invested Personal Pension (SIPP), Small Self-Administered Scheme (SSAS) or QROPS.
- Guidance on reasonable steps to take to minimise delay and provide reassurance to all parties.
- Information which should be provided to raise member awareness of pension scams.
- Suggested additional organisations which may help to better inform members about the risks of scams.
- A guide to help trustees and providers to identify some "red flags" which may indicate the need for greater scrutiny.
- The steps for reporting suspicious cases to ensure that relevant authorities are aware and can investigate the perpetrators, and that the industry and regulators have meaningful information on the scale of pension scam activity.
- A set of example letters.
- Case studies highlighting scam risks.

Commencement date

The 2019 Code (v2.1) takes effect from 10 June 2019 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 10 June 2019.

Updates to the Code of Good Practice

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

Freedom and Choice in Pensions

From 6 April 2015, greater freedom and choice became available to members of defined contribution pension schemes. Though this has enabled many members of pension schemes to draw benefits at an accelerated rate, it also brings the risks of poor choice 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 defined benefit (DB) scheme members who cannot take advantage of the new flexibilities within their existing DB arrangements, to try to scam them out of their benefits. This is particularly prevalent where there is a DB scheme in financial distress, as witnessed by the recent British Steel case. The due diligence set out in the Code applies to transfer payments, but practitioners should also be vigilant where benefits are being paid out to members as benefit payments in cash.

Other developments

Evolving tactics by scammers
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 cold calling and "factory-gating" (i.e. approaching people outside their workplace) to contact those likely to have access to significant pension savings. 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, offer to attempt to recover the lost money. Where they fail to do so, the individual is even further out of pocket.

The pensions industry has also seen the emergence of "international SIPP transfers" since the introduction of the Overseas Transfers Charge in March 2017. This is referred to in detail in Principle 3 of the Code. Case studies involving International SIPPs are included in Appendix E.

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.

In the meantime, the Industry Group continues to recommend that appropriate due diligence is carried out on transfers which are transacted using automated systems, such as Origo, especially on international SIPP transfers of concern.

The Pensions Ombudsman: Cases
In January 2015, The Pensions Ombudsman (TPO) published determinations on complaints in connection with suspected pension scam cases. The Industry Group considered the impact of the cases and strengthened the due diligence and decision-making process where relevant. This has been kept under review as further determinations have been published. The implications of the case of

Hughes v Royal London Mutual Insurance Society Ltd (an appeal in 2016 from TPO's Determination PO-7126) have also been considered.

In a more recent Pensions Ombudsman 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 having conducted adequate checks. He also alleged that the Authority failed to provide him with a sufficient warning as required by the Pensions Regulator. Mr N was concerned that his entire pension fund may have been lost or misappropriated as a result of the transfer. The Ombudsman 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 Pensions Regulator's transfer fraud warning leaflet; and
- engage directly with Mr N regarding the concerns it should have had with his transfer request, had it properly assessed it.

Importantly in this case, the transfer request was received in November 2013, nine months after the Pensions Regulator launched its Scorpion campaign warning of pension liberation/scams risks. February 2013 has been held by the Ombudsman in previous determinations to be a point of considerable change in the level of due diligence expected of trustees, managers and administrators when considering transfer requests. As such, more would have been expected of the Authority in this case.

To put matters right, the Authority was directed to reinstate Mr N's accrued benefits in the Scheme, or provide equivalent benefits, adjusting for any revaluation that has arisen since the transfer. However, to avoid 'double counting', the Authority would be entitled to recover from Mr N the amount of his pension fund that the trustees of the new pension scheme are able to retrieve for him (if any). The Authority was also directed to pay Mr N £1,000 to reflect the materially significant distress and inconvenience that Mr N suffered.

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 warnings being given to members about the risks of pension scams.

The Code of Good Practice has itself been mentioned in a recent Ombudsman determination as a source for considering due diligence processes to combat pension scams (see paragraph 32 of PO-16907, a June 2018 determination concerning a different Mr N). 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 cash equivalent transfer right would not be established. No specific ruling was made in that regard as the Ombudsman determined in any event that the receiving scheme had not established it was registered with HMRC meaning there was no statutory right (see further on this at 6.3.1).

A further Pensions Ombudsman determination from September 2018 (PO-19383) has highlighted that a proportionate approach needs to be taken to due diligence on potential transfers when the risk of a scam is minimal. The Ombudsman found in this particular instance that the level of due diligence was too high in relation to a relatively well-known pension scheme. It was noted by the Ombudsman 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. Indeed, whilst the Code does not make an explicit connection between size of a scheme and legitimacy, it does make clear (see section 6.2.1) that an initial risk assessment should be made, ruling out the need for more extensive due diligence when the legitimacy of the receiving scheme is easy to establish through, for example, existing knowledge.

Pension Scams: Consultation Response
In August 2017, the government confirmed that new measures would be introduced in order to protect private pension savers from the threat of unscrupulous pension scammers. The measures were proposed to include:

- a ban on cold calling in relation to pensions, including emails and text messages.

- a tightening of HMRC rules to stop scammers opening fraudulent pension schemes, including ensuring that only active companies, which produce regular up to date accounts can register occupational pension schemes.
- tougher actions to help prevent the transfer of money from pension schemes into fraudulent ones, including a proposed change to the statutory right to transfer to include evidence of an earnings link to an employer of the receiving scheme, where it is an occupational pension scheme.

The first two proposals have now been implemented.

The changes proposed by the third measure will mean trustees must check whether the receiving scheme is regulated by the FCA or is an authorised master trust, or if there is a genuine employment link or transfers to QROPS in certain circumstances in order to determine whether there is a statutory right to the transfer. The government stated in its consultation response that this should not mean that transfers outside of the statutory right should be blocked, without good reason. It should be noted that a scheme's rules may allow a discretionary right to a transfer where a statutory right does not exist.

The government response to the Work and Pensions Select Committee's report, "Protecting pensions against scams: priorities for the Financial Guidance and Claims Bill", agreed with the Committee about the need to:

- address the threat posed by pension scams by cutting off scamming activity at the source to disrupt criminals and protect savers; and
- ensure more people are able to make informed decisions about their personal finances and pension savings in particular.

The government introduced powers in the Financial Guidance and Claims Act 2018 to enable them to make regulations to ban cold calling. That ban came into force on 9 January 2019. See – https://www.gov.uk/government/news/pensions-cold-calling-banned. The ban prohibits cold-calling in relation to pensions, except where:

- the caller is authorised by the FCA, or is the trustee or manager of an occupational or personal pension scheme, and
- the recipient of the call consents to calls or has an existing relationship with the caller.

The Pensions Regulator action
Scams are now so complex that the pensions industry alone will never be able to prevent them all. However, TPR has recently taken significant 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.

On 19 March 2018, TPR and the FCA launched a joint paper setting out their strategic approach to regulating the pensions and retirement income sector. This included a section on ensuring pension savings are safe and asking for comment on how organisations can further improve standards in this area. Widespread adoption of this Code is a way to achieve that.

More recently, the Pensions Regulator and the Financial Conduct Authority have joined forces to launch a campaign urging people to be aware of scammers targeting their pension savings, as it was revealed an average of £91,000 was lost per victim in 2017, with some people losing more than £1 million. The 'ScamSmart' advertising campaign targets savers aged between 45 and 65, which the regulators say is the most at risk group. Further information can be found on this at – https://www.fca.org.uk/scamsmart/how-avoid-pension-scams.

FCA Letter "Managing the risks of Defined Benefits to Defined Contribution transfers"
In letter sent to the Chief Executive Officers of major providers on 22nd March 2019, the FCA has set out how providers should treat customers fairly in the context of defined benefit to defined contribution 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 reflected in additional due diligence incorporated within Section 6.2.2 of the Code.

Other guidance

1. The Pensions Administration Standards Association (PASA) and The Transfers and Re-registration Industry Group (TRIG) are currently working to improve due diligence and, where possible, speed up the transfer process for bona fide transfers. Guidance is expected to complement this Code of Good Practice and be published during 2019.

2. The Personal Finance Society's Pensions Advice Taskforce has published a voluntary Code of Good Practice 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.

3. The FCA, tPR and TPAS have published a joint protocol 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 defined benefit (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.

Emergence of claim firms encouraging scam victims to start actions against transferring schemes

A very recent phenomenon is the emergence of firms that identify people who have transferred from pension schemes and have become a victim of a pension scam or are otherwise having problems following the transfer. This might have gathered momentum as a result of the Ombudsman determination (PO-12763) described above, although it needs to be borne in mind that this related to a very specific set of facts and that many ceding schemes will have had in place suitable due diligence before effecting a transfer or, alternatively, might have effected the relevant transfer prior to February 2013 from when the Ombudsman has expected a considerable change in the level of due diligence from those making transfers.

Such firms typically operate by getting 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 Pensions Regulator; and
- 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 ensure they comply and take advice as deemed necessary. However, consideration can be given as to 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 fall to be provided. It is possible to redact information that has been gathered in the prevention of financial crime. This could apply to due diligence that highlights any suspicions, which might assist scammers improve their techniques.

FCA register change

From December 2019, the FCA will no longer update 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 is due to launch 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. Between December 2019 and December 2020, new information will not be made available by the FCA on these individuals.

However, advice firms will continue to be listed on the FCA Register without interruption. Trustees and providers may continue to 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.

The authors of the Code and Members of the Pension Scams Industry Group

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.

Chairman:	*Margaret Snowdon OBE, Pensions Administration Standards Association (PASA)
Trade / Consumer bodies:	David Loosemore, The Pensions Advisory Service (TPAS, part of the Money and Pensions Service) Zoe Smith, Association of Member-Directed Pension Schemes (AMPS) and Barnett Waddingham *Roger Berry, Guernsey Association of Pension Providers (GAPP) and Concept Group Renny Biggins, Tax Incentivised Savings Association (TISA) Samantha Pitt, Association of Professional Pension Trustees (APPT) and Law Debenture Caroline Escott, Pensions and Lifetime Savings Association (PLSA)
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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.

Association of British Insurers
Department for Work and Pensions
Financial Conduct Authority
Phoenix Group
The Society of Pension Professionals
XPS Pensions Group

Margaret Snowdon OBE, Chairman

3. Principles of the Code

There are two key aims that pension scheme trustees/providers will generally have in their conduct of a transfer request from a member: firstly, to make only a valid transfer, and secondly to help put the member in a position to make an informed choice in relation to a valid transfer where there are suspicious circumstances. A transfer that is not to a registered pension scheme, or to a QROPS, is not a valid transfer.

“Pension scams” including “pension liberation”, may involve fraud and theft. A range of scams have been developed that go significantly beyond the original liberation concept of setting up trust-based schemes, to exploit perceived tax and legal loopholes, and, typically, offering members cash payments if they transfer from legitimate pension schemes. Reported scams include ‘cloned’ QROPS and unusual investment opportunities, typically offered via arrangements such as SIPPs and SSAS, promising extraordinary rates of return. These will not necessarily be unlawful in all cases, but members are at risk of losing their pension savings.

Scheme members have a responsibility to protect themselves from scams, but they need assistance in this. TPR, FCA and HMRC are clear that the industry should play its part in ensuring 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 funds taken from their pension savings.

The steps that trustees, administrators and providers should take to protect scheme members from pension scams 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, but proportionate, 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 below for further information on the core principles:

Principle 1: Trustees, providers and administrators 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 TPR's Guidance (originally in the form of the ‘Scorpion’ materials) now replaced by the joint TPR/FCA ScamSmart warnings, should be provided in transfer packs and, where possible, retirement packs and statements, as well as on websites where applicable. (See 4.4.1 for online locations of awareness material.) This material should be sent to scheme members directly, rather than through their advisers. A good way to promote member understanding further is to contact them by telephone directly as part of the due diligence process.

- Administrators may prefer to include a helpful paragraph in standard retirement letters, rather than a separate leaflet. A suggested wording is referred to in 4.3, Pre-Retirement Scam Warnings.

- Administration staff should be made aware of the risk of pension scams. Staff who deal with scheme members should be made aware of guidance materials, to help them to identify potential pension scams.

- Where relevant, employers should be made aware of the risk of pension scams.
- A ban on cold calling has been in force since 9 January 2019.

Principle 2: Trustees, providers and administrators should have robust, but proportionate, 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 request, trustees, providers and administrators should conduct due diligence on the receiving scheme. Where they suspect that the receiving scheme may be involved in a scam, trustees, providers and administrators should carefully consider whether the transfer should proceed.
- Appropriate due diligence will vary for different types of pension schemes. In carrying out due diligence, trustees, providers and administrators 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 (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).
    - It should also be checked that the entity has not been 'cloned'.
- The FCA has also outlined its expectations in regard to advice given on pension transfers and has followed up its January 2017 notice below with a further letter to advisers reminding them of their responsibilities:
        - https://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations.
    - "Safeguarded benefits" offer additional security and often valuable guarantees that are lost if the member transfers or converts those benefits to acquire flexible benefits, or to access their benefits using the new flexibilities. They are typically pension savings that offer a proportion of an individual's final salary or an average of the salary over their career. They also include pension savings with the option to purchase an annuity at a guaranteed rate.

The FCA "expect a firm advising on a pension transfer from a defined benefit (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."

- On 26 March 2018, the FCA published new rules and guidance on how advice should be provided to consumers on DB pension transfers (www.fca.org.uk/publications/policy-statements/ps18-6-advising-pension-transfers). It has also consulted on further changes for improving the quality of pension transfer advice (https://www.fca.org.uk/publications/consultation-papers/cp18-7-improving-quality-pension-transfer-advice).

- Currently, for transfers to overseas schemes, the FCA acknowledges "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."

  Having considered the responses to its late 2016 call for evidence on the advice requirement and overseas transfers, the government considers that the advice requirement as applied to overseas transfers is largely working and does not require an easement. Reference should also be made to The FCA Policy Statement on transfers at:

  - https://www.fca.org.uk/publication/policy/ps18-06.pdf

- The FCA is "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."

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

- Full details are outlined in the following FCA publication:

  - https://www.fca.org.uk/news/news-stories/investment-advisers-responsibilities-accepting-business-unauthorised-introducers-lead-generators

Please also refer to the FCA passporting guidance:

- https://www.fca.org.uk/firms/passporting

For additional information, see section 6 of this Code (Due Diligence Process).

- 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. It may be advisable to ensure that the representatives making such calls are suitably skilled to ensure that members are 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 the costs of due diligence and the personal touch can help the member think more clearly about the risks, as is evidenced by the proportion of members who change their minds about the specific transfer.

- The following factors should be considered, in an assessment of a receiving scheme:

    - Risk of scam: Does it look as though there is a material risk that the individual's pension savings will be at risk of a pension scam if a transfer payment is made?

    - Risk of making an unauthorised payment: Does it look as though there is a material risk that the scheme could be responsible for making 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 statutory deadline: Consider the timescales for complying with the transfer request (and whether you can request an extension from TPR).

- Where there is considered not to be a material risk of a pension scam, the transfer should be processed quickly and efficiently.

- Where there is a material risk of a scam, whether or not the member has a statutory right to transfer, further details of the transfer should be checked. This may involve taking legal advice.

- If the member does have a statutory right to transfer, it will need to be decided whether to proceed with the transfer despite the risk of a scam. This involves an assessment of the risks associated with either blocking or allowing the transfer. Again, this may involve taking legal advice.

- If the member does not have a right to transfer, or if, following the assessment of the risks, it is decided that the transfer should not proceed, the following actions should be taken:

    - Write to the member and inform them that, on the evidence available, the transfer will not be paid. Ensure you include the reasons why the transfer cannot be paid. Provide information about potential consequences of a pension scam and an explanation of the most significant concerns preventing the transfer.

    - Where appropriate, for example, where there is an active letter of authority, write to the administrator of the receiving scheme and inform them that, on the evidence available, the transfer cannot be processed.

    - Where appropriate, report the scheme, the administrator and anyone else involved, to TPR and, FCA or Action Fraud– see 6.6.2 (Note 1), 6.7 & 6.8.

    - If the member challenges a decision to block a transfer and provides sufficient additional information to satisfy the concerns that have been raised, then the trustees, providers or administrators should proceed with the transfer and inform the member of their decision.

- When dealing with an insistent customer, or where a decision to make a transfer is taken despite concerns about pension scams, the trustees, providers or administrators should ask the member to contact The Pensions Advisory Service (TPAS), for impartial guidance on the risks of scams.

  (N.B. From 1 January 2019, the Single Financial Guidance Body known, from 6 April 2019 as the Money and Pensions Service, brings under one new organisation the free services delivered by The Pensions Advisory Service, the Money Advice Service and Pension Wise.)

- If the member insists on making a transfer, trustees, providers or administrators should ensure that the discharge forms that the member has signed 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 - see 4.5).

- Due diligence is less 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 6.2.1). However, risk remains that what appears to be a vetted scheme has been cloned or the paperwork has been falsified, so details need to be carefully checked.

- Trustees, providers and administrators should use their own judgment, take appropriate advice if necessary, and record their decisions.

Principle 3: Trustees, providers and administrators 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 The Pensions Regulator's Guidance, FCA alerts and by Action Fraud (see 6.1 for links to the guidance).

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 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.*

- 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 ROPS list, as maintained by HMRC, but also that other details such as address are correct.*

- 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; all complaints should come from the scheme member rather than a third party.*

- Pension scams sometimes promise high or guaranteed returns to attract investors. *This has been a particular strategy of scams using SIPPs or SSAS and the FCA have issued information about these particular scams.*

- Scheme members may be coached by those attempting to scam them to answer basic due diligence questions posed by trustees, providers and administrators.

- A still current issue in terms of pension scams is the use of what have been termed "international SIPPs". These have been a popular transfer option since the overseas transfer charge was introduced for some transfers to QROPS from March 2017. These requests are typically for transfers which previously would have been directed to QROPS but are now directed at specialist UK SIPPs that regularly deal with non-UK resident members. 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. In addition, some UK residents are also being targeted. The Industry Group has heard reports of the same intermediaries and advisers, which were the source of concern on QROPS transfers previously (prior to March 2017), being involved in these international SIPP transfer requests. Key warning signs relate to cold calling, the use of unregulated intermediaries and investments in the new scheme being either wholly or partly invested in what are likely to be high-risk, overseas investments. It might seem 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 trustees, providers and administrators is the fact that, as the transfer is to a UK SIPP, a statutory right to transfer is likely to exist. The scam in this example might be an investment scam which is being facilitated through an ostensibly legitimate pension scheme, rather than a transfer to a scam pension scheme. 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. This illustrates how difficult it can be for a transfer request to be adequately assessed.

- 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.

  The operators of some UK international SIPPs are going into liquidation because of financial claims against them and the jurisdiction for any individual redress is uncertain.

  Please also refer to the Member Letter Wording shown in Appendix A for some proposed wording for members addressing the risk of "international SIPPs".

Fact and Figures on scams

The number of people seeking information about pension scams has soared since the launch of the first joint campaign by the Financial Conduct Authority (FCA) and The Pensions Regulator (TPR) in Summer 2018.

In the 55 days before the launch around 31,000 people visited the ScamSmart website at an average of 562 per day. In the 55 days after the launch this rose five-fold (462%) to more than 173,000 people - an average of 3,145 per day and the equivalent of one every 27 seconds. Additionally, over 370 pensions holders were warned about an unauthorised firm after using the Warning List, an online tool that helps consumers check a list of firms operating without authorisation.

The two regulators are urging all pension holders to be on their guard against pension scams as new research suggests that half (52%) of 45-65 year olds with a pension do not think they are likely be targeted by a pension scam. The most common reasons given were that they are too savvy to be scammed (21%) or that they didn't have enough money saved in their pension (18%).

Victims of pension scams last year lost an average of £91,000 each to fraudsters. They reported receiving cold-calls, offers of free pension reviews and promises that they would get high rates of return - all of which are key warning signs of scams. There have also been examples of individuals losing more than £1 million to the scammers.

Research from the FCA estimates over 10 million UK adults received an unsolicited pension offer in just one year.

Source: The Pensions Regulator

The Pensions Regulator 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.

FCA

FCA has produced a leaflet on individuals protecting themselves from scams, which is available at the link below https://www.fca.org.uk/sites/default/files/infographics/pension-scams-infographic.jpg

PSIG has published the results of a study on the scale of scam activity affecting members and practitioners, *'The PSIG Scams Survey Pilot 2018'.*

PSIG 2018 pilot final.pdf

Key findings included:

- Information on scams is not readily available at an organisational level
- PSIG's Code of Good Practice on pension scams is a good basis for due diligence
- Between 5% and 10% of transfer requests raise red flags on due diligence checking – more if the checking includes a conversation with the member.
- Significant time and effort goes into protecting members from scams
- The more detailed the due diligence, the more suspicious traits are identified
- Self-invested personal pensions (SIPPs) – including international SIPPs – are the vehicle of choice by scammers
- Quality of adviser tops the list of practitioner concerns, with member awareness a close second
- Sharing intelligence would help avoid duplication of effort

Further information on scams can be found on websites operated by TPR, the FCA, and Action Fraud.

4. Background

4.1. What is a pension scam?

In its August 2017 response to the Consultation on Pension Scams (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf), the government arrived at the following definition of a "pension scam":

"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."

The "scam" usually occurs through the member of a genuine pension scheme being persuaded to transfer his/her benefits to a new scheme (which might well be a properly registered scheme). The business promoting the scam may charge very high fees and, in some cases, fraudulently divert funds. The new scheme may allow access to pension savings before normal minimum pension age (normally age 55, other than on ill-health or death) or more cash than would normally be allowed either directly from the new scheme or indirectly via a purported investment made by the scheme (which might be described as a loan or a rebate or commission payment). These payments are very likely to be unauthorised payments and thereby give rise to tax charges.

There are many ways in which those promoting pension scams mislead members. For example, the member may not be warned about the tax charges, the very high fees being charged or the way in which the pension funds are being invested. In many cases they claim to be taking advantage of a "loophole" that, in reality, does not exist.

4.2. 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 right to a transfer, the transferring scheme has a statutory obligation to make the transfer and must do so within six months of the application (or guarantee date in the case of a defined benefits scheme*).
- the transferring scheme rules may also give the member a right to transfer out even where a member does not have a statutory right to a transfer.

* If the member applies for a statement of entitlement, and has a statutory right to transfer the benefits, the statement must carry a guarantee date not later than three months from the date of the member's application, and it must be provided within ten days of that guarantee date.

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

- whether the member has a statutory right to transfer. This will involve an assessment of whether the transfer meets the necessary legal requirements.
- whether there is a right to transfer under the transferring scheme rules.
- whether the right to a transfer 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.

Guidance on statutory transfers of defined benefit pension rights is provided on TPR's website: http://www.thepensionsregulator.gov.uk/guidance/db-to-dc-transfers-and-conversions.aspx.

4.3. Pre-Retirement Scam Warnings

Many scams are perpetrated on funds paid to members as authorised benefits and are therefore not strictly pension scams. However, trustees, providers and administrators should do whatever they can to ensure members are aware of the risks posed by unscrupulous advisers or introducers who may persuade them to invest their encashed scheme savings into inappropriate investment schemes. Policing post-retirement investments is beyond the scope of this Code, but by warning members of the risks, by, for example, issuing a TPR leaflet, or by including an additional paragraph on pension statements, retirement packs and other customer communications such as that shown below, trustees, providers and administrators can help reduce the risks:

Beware of pension scams Falling foul of a scam could mean you lose some or all of your money. See **pension-scams.com** or **fca.org.uk/scamsmart**

Trustees, providers and administrators should also encourage members taking cash from pension schemes to call TPAS, part of the Money and Pensions Service, for free, impartial guidance on scams risks.

4.4. The Regulatory Framework

4.4.1. The Pensions Regulator

TPR is the UK regulator of work-based pension schemes. It has published detailed information on pension scams, (see - http://www.thepensionsregulator.gov.uk/pension-scams.aspx) 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 recent materials include a trustee checklist to help trustees to work through the due diligence they have to do when looking at transfer requests.

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

In its scam awareness materials, TPR has stated that it cannot predetermine any future regulatory action it may take. However, where the transferring trustees or administrators can provide evidence for concerns that member funds may be at risk, this would be a factor to consider when deciding whether to take action in respect of 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 scheme that is an occupational pension scheme (OPS) need more time to implement a transfer, for example because they need more time to carry out the due diligence steps in the Code of Good Practice, and if they consider that they meet the criteria for an extension, then they may apply to TPR for an extension to the normal six-month time period. 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;
- 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 request for an extension, indicate the additional time required to effect the transfer 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. See 6.5.3 for further information.

4.4.2. The FCA

The FCA regulates all operators of individual personal pensions, including SIPPs, and all operators of 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 (GPPs) and Group SIPPs, with TPR leading on occupational pensions.

The FCA has the overarching strategic objective of ensuring that the relevant markets function well. This is 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 over 58,000 financial services firms in the UK and 145,000 approved persons *(Source: FCA Business Plan 2018/19)*, 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 on its website (https://www.fca.org.uk/scamsmart/how-avoid-pension-scams). This information was last updated in September 2018.

4.4.3. HMRC

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

In 2013, HMRC's registration process was changed to deter pension scams:

- HMRC carries out a risk assessment process before deciding whether or not to register a pension scheme.

- HMRC requires that the main purpose of a registered pension scheme should be to provide authorised pension benefits.

- HMRC has powers to 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 provide confirmation of the registration status of the receiving scheme. HMRC can provide such confirmation without seeking consent from the receiving scheme. For further information, see 6.3.1.

Tax legislation sets out a list of payments which a registered pension scheme is authorised to make in respect of members, without incurring a tax charge. A transfer of a member's pension benefits will be an unauthorised payment if it is not a recognised transfer. In order to be a recognised transfer, various conditions need to be met, including that the receiving scheme is a registered pension scheme (or a QROPS).

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.

Where unauthorised payments are made, this could result in the following tax charges applying:

(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 administrator.

As part of the measures the government is taking to tackle pension scams, the Finance Act 2018 makes provision so that, from 6 April 2018, HMRC has the power to refuse to register or to de-register an occupational pension scheme if a sponsoring employer is a body corporate that has been dormant during a continuous period of one month that falls within the period of one year ending with the date of the decision.

It should also be noted that, for certain transfers requested after 8 March 2017, an overseas transfer charge could apply as explained in the HMRC Pensions Tax Manual at https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm112010.

4.4.4. The Pensions Ombudsman (TPO)

TPO has jurisdiction to 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 make directions requiring a blocked transfer to be made and/or for the payment of compensation for financial loss and/or any distress or inconvenience caused to the member.

TPO must determine matters in accordance with the law and will therefore assess cases by reference to whether members have a statutory right to transfer and/or transfer rights under the scheme rules. TPO published three determinations in January 2015 in relation to 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 right to a transfer (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 (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, as highlighted above, the government has stated its intention to change the law requiring a genuine employment link if the transfer is to be made to a scheme that is not an authorised master trust or regulated by the FCA. The government has stated that the proposed change will follow the roll out of the master trust authorisation regime in 2018/19 and that it will consult with the industry on the details of and draft regulations for the employment link and QROPS transfers. Scammers may anticipate this legal change by asking members to sign bogus employment contracts, service contracts or zero hours contracts. Vigilance is needed.

See, also, Recent Developments, above.

4.5. Potential consequences for trustees and providers

The difficulty for those faced with a suspected pension scam is that, on the one hand, the member may have a statutory transfer right (or a right to transfer under the scheme), but on the other, 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 which must be considered.

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

- TPR may take action where there was a statutory right to transfer, including imposing a financial penalty of up to £1,000 in the case of an individual and up to £10,000 in any other case on anyone who has failed to take all such steps as are reasonable to ensure the transfer was made (although, note the TPR's comments at 4.4.1).
- 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 a direction to pay compensation covering any actual financial loss to the member of the transfer not having been made and/or a payment for any distress or inconvenience caused to the member. As noted at 4.4.4, TPO's key focus in determining a complaint is likely to be on whether the member has a right to transfer and, based on TPO's determinations published to date, where such a right exists it is likely that the complaint would be upheld. See, also, Recent Developments, above.
- Having to recalculate and pay the transfer value.
- There may be reputational issues for the trustees/providers if it is perceived that they have blocked a legitimate transfer request.

If trustees/providers make a transfer to a scheme that it transpires is a pension scam vehicle, the potential consequences include the following:

- They may have made an unauthorised payment, resulting in tax penalties for the member and the transferring scheme (see 4.4.3).
- The member could complain to TPO that the trustees/providers should not have made the transfer. Again, costs may be incurred defending the complaint which, if upheld, could result in a direction to pay compensation covering any financial loss to the member of the transfer having been made and/or a payment for distress or inconvenience. See, also, Recent Developments, above.
- The trustees/providers may not benefit from the statutory discharge from any obligation to provide benefits to which the transfer relates. This means that, despite the trustees/providers having transferred out the member's benefits, the member (and any contingent beneficiaries) could still claim benefits from the scheme.
- Even if the member has signed a bespoke, non-statutory discharge, this may not bind contingent beneficiaries, meaning the scheme could face claims by contingent beneficiaries for benefits.
- There may be 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.

The government's pension scams consultation, as launched in December 2016 and as responded to by the government in August 2017, proposed restricting the statutory right to transfer, as considered elsewhere in the Code. Whilst this is expected to reduce the number of transfer requests made under the statutory right, it will not necessarily affect the number of transfer requests made. A reduction in the number of transfer requests under the statutory right, within a similar number of overall transfer applications, would mean that more transfer requests were being considered from a non-statutory perspective. This increases the onus on ceding scheme administrators and trustees to use their judgment, and perhaps correspondingly adds to the risk that refused transfers will result in complaints to

TPO. Ceding schemes should review their processes for assessing non-statutory transfer requests, both in this context and generally.

5. Pension Scams Due Diligence Process - Summary

A detailed description of the Pension Scams Due Diligence Process is set out in Chapter 6. In summary, the process consists of:

- Transfer and Retirement Packs (6.1)
- Transfer Request - Initial Analysis (6.2)
- Additional Information Requests (6.3)
- Further Due Diligence (6.4)
- During the Due Diligence Process (6.5)
- Determining Pension Scam Risk (6.6)
- Refusing a transfer and reporting (6.7)
- Reporting to The Pensions Regulator (6.8)
- Member appeals (6.9)
- Discharge forms and insistent members (6.10)
- Internal "white list" approach (6.11)
- Example letters (6.12)

6. Pension Scams Due Diligence Process - In Detail

6.1. Transfer and Retirement Packs

Every pension transfer pack should include pension scams awareness material. If a transfer pack is not being sent to a member directly, pension scams awareness material should still be sent to the member's home address.

This should include a copy of TPR's latest pension scams awareness material. A link to the relevant section of TPR's website is given below:

https://www.thepensionsregulator.gov.uk/en/trustees/understanding-your-role/protect-your-members-from-scammers

The transfer pack may also reference the FCA's "ScamSmart" material on www.fca.org.uk/scamsmart.

The Code also recommends the improved practice of including pension scams awareness materials in pre-retirement letters to help raise member awareness of the risk of post-retirement investment scams. Adding a simple paragraph as suggested in 4.3 could be a straightforward and low-cost alternative to including a separate leaflet.

Where a member responds to say that they think they may be the victim of an attempted pension scam, full evidence of the attempted scam should be captured, and the matter reported to FCA and Action Fraud (as per Appendix D) and, if an individual or a firm has provided regulated advice but without the authorisation to do so, this should also be reported to the FCA). The FCA are also keen that concerns about high fees are reported to them. Please see 6.7 for further information on reporting.

6.2. Transfer Request - Initial Analysis

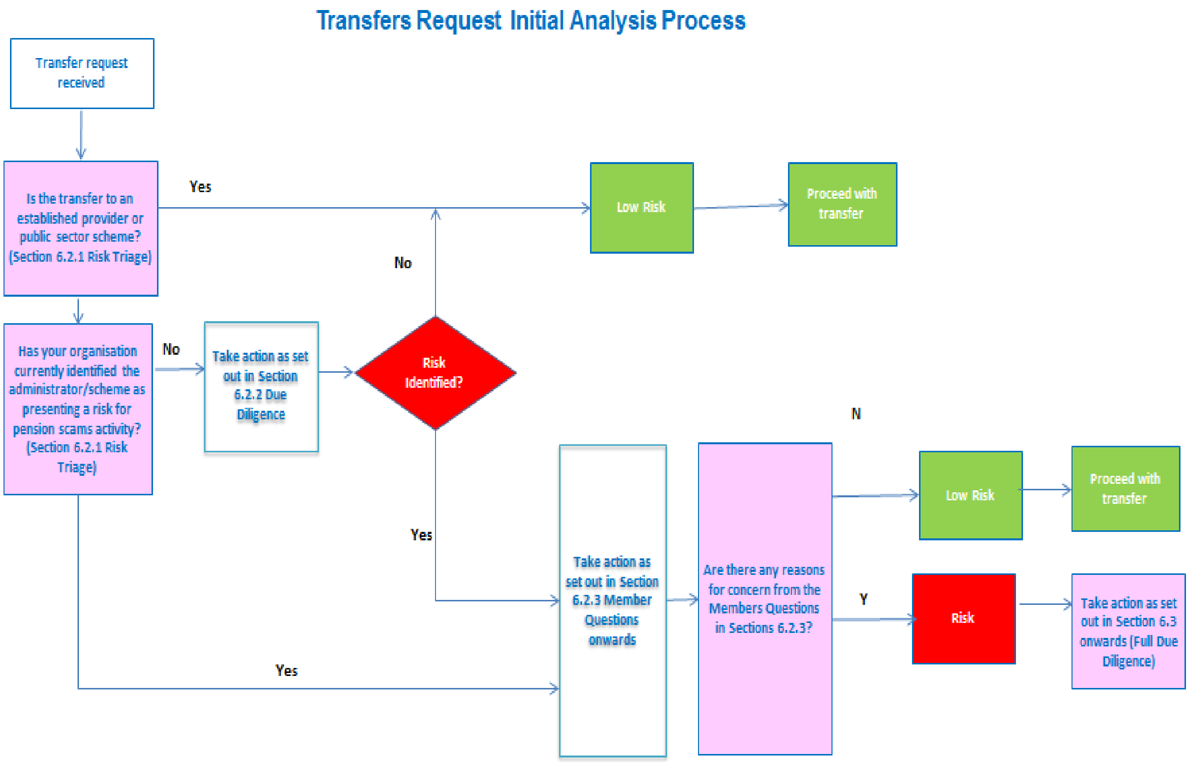
The purpose of this stage of the process is to decide whether detailed due diligence is required.

This guidance is in addition to schemes' normal transfer processes.

It should be expected that during the course of the normal transfer processes, schemes would collect the following information as a minimum:

- member requesting transfer: name and address; and
- financial adviser (where required): [the firm's]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.

Once you have those details you can begin the initial analysis. A high-level process flow of the transfer request initial analysis is shown below



6.2.1. Initial Analysis – Risk Triage

When a transfer request is received each of the following steps should be undertaken initially:

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 and "known associates" (director, shareholders) as <u>not</u> presenting a risk of pension scam activity? (Transferring organisations may hold well developed and maintained "white" lists of these)	If yes, 'Very low Risk', proceed with the transfer. If no, go to (iii).
(iii)	Has your organisation identified this scheme/ administrator or address as suspicious? (Transferring organisations may hold lists of these)	If yes, 'Risk', consider whether transfer should be refused or delayed while seeking further evidence, see 6.7. If no, go to 6.2.2.

6.2.2. Initial Analysis – Stage 2

Step	Response
(i) If financial advice has been received, does the adviser have the appropriate permissions? Care needs to be taken as permissions can be very specific, e.g. an adviser may have permissions to advise on pension transfers but not to advise on transfers to a SIPP/personal pension scheme. It should be noted 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. In such cases, 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 that firm in the normal way.	If advice has been received but without the appropriate permissions, complete remaining questions in this section and also Member Questions in 6.2.3. Report individuals who appear to be undertaking regulated pension transfer advice but are not authorised to do so: http://www.fca.org.uk/consumers/protect-yourself/report-an-unauthorised-firm. In a situation where an overseas adviser deals with a UK resident to move their pension, there may well be 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. The overseas adviser will be doing this for gain so it reasonable to suspect that they will be receiving money as a result of this activity, and that money would constitute criminal property in accordance with s340(3) Proceeds of Crime Act 2002 (POCA). 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 a "removing from the jurisdiction" offence under s371(1)(e) POCA. Ceding providers in this situation will also need to give consideration to 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. For other situations and further information, please refer to the guidance on SAR reporting in Section 6.7 Refusing a transfer and reporting. If you believe that the transfer would not be valid, or would be unlawful, report to both FCA - www.fca.org.uk/consumers/report-scam-unauthorised-firm and Action Fraud - (see 6.7).

(ii) Is the provider or SIPP operator regulated by the FCA? (For CBS and SIPPs) CBS providers and SIPP operators are regulated by the FCA. As part of that regulatory supervision the approved persons undergo “fit and proper” tests, which give the FCA a wide range of information and oversight, in excess of any information you would obtain via due diligence. However, if you receive a request to transfer to a scheme provided, or operated, by an FCA authorised firm the FCA would still expect further due diligence if initial due diligence (above) gave concern as to the risk of a pension scam.	If no, the transfer request should not be accepted. If yes, go to (iii). Please note that you can check whether the provider or operator is authorised by searching the Financial Services Register: https://register.fca.org.uk/ A provider of a CBS or SIPP must not only be FCA authorised but also 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.
(iii) Is there any suspicion that the scheme administrator, trustee or anyone connected with the schemes 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 also Member Questions in 6.2.3.
(iv) Is an unregulated introducer involved in the transfer request?	If Yes, complete remaining questions in this section and also Member Questions in 6.2.3.
(v) 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 red flag, as FCA regulated advice must specify the investments recommended.	If Yes, complete remaining questions in this section and Member Questions in 6.2.3.
(vi) Is the receiving scheme a newly established scheme?	If Yes, complete remaining questions in this section and also Member Questions in 6.2.3.
(vii) Is the employer actively trading?	If No, complete Member Questions in 6.2.3.
(viii) Has there been a "high volume of transfers from a single defined benefit scheme over a short period of time?	If Yes, complete remaining questions in this section and also Member Questions in 6.2.3.

(ix) Is the customer transferring out of a new defined contribution arrangements soon after transferring from a defined benefit scheme?	If Yes, complete remaining questions in this section and also Member Questions in 6.2.3.
(x) Are there any other indicators which give cause for concern?	See below.

If there are no concerns from 6.2.2, you may consider this sufficient to proceed to payment. If there are concerns, you should continue to 6.2.3.

The answers to the above questions are designed to determine whether the transferring scheme can proceed with the transfer without undertaking further due diligence and referral to the member (i.e. whether it can be fast tracked to payment or refusal).

6.2.3. Initial Analysis – Questions To Ask Members

Some information will be required to undertake the initial analysis. It will be for providers or trustees to decide how they obtain this information, but it is suggested that the trustee, provider or administrator should telephone the member directly where 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. This approach, which requires a sensible dialogue and interpersonal skills, is quicker, cheaper and more likely to yield important clues about the proposed transaction. Importantly, this approach does <u>not</u> constitute cold calling. You will need to exercise judgement where members reply with answers that raise flags of concern – sometimes members' understanding of the questions may be limited, rather than a scam being indicated. You should retain an audit trail of the information requested and the decision you have made.

Step	Response
Ask the relevant following questions of the individual requesting transfer: • Have you taken regulated advice? Who has advised you to proceed with the transfer? Is this person authorised by the FCA to advise on pension transfers? Please provide their FCA registration number. • 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? • Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)? • Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on the grounds of ill-health? • Have you been told that you will be able to draw a higher tax-free cash sum as a result of transferring? • Have you been promised a specific/guaranteed rate of return? • Have you been informed of any investment opportunity, particularly an overseas one? • Do you understand the nature of the underlying investments that you are planning to transfer into, and do you know the risks they involve? • Can you tell me how the transfer payment will be invested? • Are you transferring to a newly established scheme? • Do you know what fees will be charged and how these will affect the value of your investments over time? • Are you aware of how the fees you will be charged compare with fees that apply under your current pension arrangement? Additional questions will depend on the receiving scheme type:	Regulated advice is a requirement if the transfer payment includes the transfer of safeguarded benefits and the value of these benefits is in excess of £30,000. From 6th April 2018, if the total transfer value including the value of the safeguarded benefits is over £30,000 then regulated advice will be required. Please also see https://www.fca.org.uk/publication/consultation/cp17-16.pdf and https://www.fca.org.uk/news/press-releases/fca-confirms-final-rules-improving-quality-pension-transfer-advice If the adviser is not FCA authorised, do not provide the adviser with any information and inform the member (see sample letter in Appendix A). For overseas transfers, check whether the member has received regulated advice from not just a UK FCA regulated adviser but also one that has "passporting" status in the country in which the member is resident (i.e. outward passporting by a UK-home-state adviser) and where the benefits are being transferred to. If the permissions are not clear from the FCA website, the FCA should be contacted directly to clarify the position. If the answer to any of these questions raises concern, you should consider further action (see 6.3).

For an OPS: • 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.	If the trustee/provider/administrator and scheme is not known to you and you consider that it does pose a risk, then take action as set out in 6.3 and 6.4. If the trustee/provider/administrator and scheme is known to you and does not pose a risk, proceed to 6.6.
For a Contract-Based Scheme (CBS) (e.g. personal pension): • Does the scheme provider show a registration number from the FCA on their letterhead? Please provide the number.	To check whether the CBS is FCA authorised, see 6.2.2. If the provider is not FCA authorised, or if the provider is FCA authorised and there is a risk of a pension scam, take action as set out in 6.3 and 6.4. You should check who the parties are, as some “white-labelled” schemes carry the name of an FCA authorised firm but are not run by them. The FCA register should be searched for the name of the SIPP to see if it is registered as a trading name of a different firm.
For a SIPP: • Does the scheme operator show a registration number from the FCA on their letterhead? Please provide the number.	To check whether the SIPP is FCA authorised, see 6.2.2. If the provider is not FCA authorised, or if the provider is FCA authorised and there is a risk of a pension scam, take action as set out in 6.3 and 6.4.
For a SSAS: • Who is the practitioner/administrator of the SSAS? • Have you recently been asked to set up your own company in order to make this transfer? Please tell us about this company and your role in it.	If the practitioner/administrator is not known to you and potentially poses a risk, then take action as set out in 6.3 and 6.4. If the provider/administrator is known to you and does not pose a risk, proceed to 6.6. The setting up of a new company purely as a vehicle to facilitate a transfer to a SSAS would be an indication of a potential scam. Care should be taken where the receiving scheme name includes part of the member’s address or birthday; this might suggest that the sponsoring employer was established solely for the purpose of giving effect to the SSAS.
For a Qualifying Recognised Overseas Pension Scheme (QROPS): • Who is the administrator of the QROPS? • Which country are they based in? • Are you resident in that country? • If you are not resident in the country, do you intend to move to that country?	Full details of the due diligence checks required for Overseas Schemes are outlined in 6.4.4.

Have you been able to obtain the information required above?	If 'no', then you may not have received sufficient information to process a valid transfer – go to 6.7; otherwise, go to 6.2.3.

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', for example over 80, although this is not absolute (may be associated with cognitive or dexterity impairment, sensory impairments such as hearing or sight, onset of ill-health, not being comfortable with new technology) • change in circumstances (e.g. job loss, bereavement, divorce) • lack of English language skills.	If yes, consider the FCA Occasional Paper. The FCA has set out some ideas for firms to consider including service design and customer support. These should be considered throughout the pension transfer request process. The FCA is expected to publish further guidance on vulnerable customers. Future versions of the Code will reflect any changes in indicators.

If the member refuses to answer questions, it is reasonable to take this into account when making a decision on whether the transfer is likely to be lawful and valid. It may also be worthwhile at this point asking the member if he still wishes to proceed with the transfer, as responding to the due diligence questions may have raised doubts in his own mind.

Do the responses to the Initial Analysis & 'Member Questions' in 6.2.2 and 6.2.3 indicate a risk of Pension Scam?	If no, proceed with the transfer. If yes, take action as set out in 6.3.

6.3. Additional Information Requests

It is important that trustees and providers do not go straight to requesting information from HMRC or NFIB instead of first carrying out their own due diligence as set out above. Decisions on transfers based solely on HMRC responses or alerts may not be robust enough at this stage and will tie up limited resources.

6.3.1. HMRC requests

If, after completing the initial analysis, you are unable to rule out the risk of a pension scam you should query the status of the receiving scheme with HMRC and include all the relevant details.

To do this you must either attach your enquiry 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 after your initial request before you receive any response from HMRC. 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

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.

Response 2

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 from HMRC, you should move to 6.4 and undertake further due diligence.

If response 2 is received from HMRC, it is very difficult to see how you can safely justify a transfer being made when there is a risk that it would be made to a scheme that is not registered with HMRC and therefore potentially constituting an unauthorised payment. This might be considered to provide sufficient justification in isolation for you to refuse to make the transfer, irrespective of other information and concerns. A recent Pensions Ombudsman determination (PO-16907 Mr N) has apparently removed doubt in this area by confirming that an inability to confirm 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. It remains prudent to take legal advice in this regard if in doubt.

In future, a pension scheme sponsored by a company that is dormant for a continuous period of one month is at risk of being de-registered and a Response 2 may not mention that de-registration is pending. Caution should be exercised.

HMRC's response will be based on information available at the time and is intended to help the scheme decide whether to make a transfer. It should not be the only check that the scheme carries out and relies on. The scheme should make further checks to satisfy themselves before making a transfer.

Any confirmation provided is **not** to be taken as a recommendation of a scheme or product by HMRC.

6.3.2. Law Enforcement Intelligence

Project Bloom is a multi-agency body for tackling pension scams. It is chaired by TPR and includes representation from Action Fraud, the National Crime Agency, City of London Police, the FCA, TPAS (part of the Money and Pensions Service) and the Pension Scams Industry Group (PSIG) amongst others. The Project has worked on raising awareness of pension scams with the pensions industry and the general public and has referred certain scams for investigation.

Project Bloom arranged for reports of pension scams to be made to Action Fraud (the details for reporting are included in 6.7), 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.

6.4. Further Due Diligence

The level of due diligence that should be conducted is partially dependent on the type of receiving scheme that the transfer is being made into, therefore this guidance has been divided into the following sections:

- 6.4.1 Occupational Pension Schemes (OPS)
- 6.4.2 Self-Invested Personal Pensions (SIPP) and Contract-Based Schemes (CBS)
- 6.4.3 Small Self-Administered Schemes (SSAS)
- 6.4.4 Qualifying Recognised Overseas Pension Schemes (QROPS)

At this stage, further due diligence should be undertaken in respect of a wide range of issues, including regulatory, geographical link and receiving scheme provenance. You should keep a record of your decisions in relation to each area of due diligence. An example decision sheet has been provided to help you with this (see Appendix B).

Depending on the systems and processes of your organisation, you may find certain information easier to collect and interpret. Therefore, it is up to you how you collect the information; example questions are included in each section.

It may not be appropriate to ask all questions, in all cases.

6.4.1. Occupational Pension Schemes (OPS)

When conducting due diligence on an OPS for the first time, there are a number of key types of information to consider.

Sections (a) to (e) set out what types of information should be collected and the purpose of collecting that information.

Each section sets out example questions that you can use to find the type of information that will be useful to you when making a decision about whether a scheme or administrator poses a pension scam risk. You can choose which questions to use and you can ask alternative questions that will achieve the same purpose. This is to help you fit the due diligence process into your existing processes.

Next to each question is an example of the evidence that you can collect to support your decision. Although there is flexibility in the evidence you require, it is essential that evidence is collected and retained.

When you have gathered your due diligence go to 6.6 to determine if you should proceed with the transfer.

(a) Pension Scam risk

Purpose

Pension funds under an OPS should not be accessible (without attracting tax penalties) until normal minimum pension age has been reached (save in cases in cases of ill-health or death; or where the member has a protected pension age). The questions outlined in 6.2.3 in relation to:

- cash payments, bonuses, commission or loans;
- accessing part or all of the fund before age 55

are designed to validate that the main purpose of the scheme is to provide retirement benefits for the member.

(b) Regulatory

(i) Purpose

There is no requirement for an OPS or its administrator to be FCA-registered but trustees of all OPSs must be listed as data controllers with the Information Commissioner for Data Protection purposes. TPR has oversight of OPS and administration.

Insurance companies that provide occupational schemes must be FCA-registered. There is a substantial due diligence process involved, and clear rulebook to follow. Appropriate FCA registration should give substantial comfort that the scheme has not been established for suspicious purposes.

(ii) Example questions and validation

Question	How to gather information
Is this an insured pension scheme? If yes, is the provider FCA regulated?	Check the Financial Services Register (see link at 6.2.2).
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.

(c) Employment link

(i) Purpose

All OPSs should normally have a clear link between scheme employer and member. Is the information about the employer consistent with the occupation details from the member/policyholder? A lack of identifiable link may be a risk indicator (although note that there is not currently a legal requirement that the scheme employer employs the member).

The pension scams consultation has also given rise to the principle that the registering of new occupational pension schemes should be confined to those sponsored by an active employer; this would exclude schemes established by dormant employers. HMRC have also recently acquired additional powers to de-register schemes sponsored by dormant employers. This does not mean that a scheme sponsored by a previously active employer which has become dormant is not appropriate for continued registration. A registered pension scheme is independent of its sponsoring employer and should be expected to be considered for registration purposes by reference to its adherence to those conditions under which schemes gain and maintain registered status.

The website of Companies House can be a useful facility for checking factors such as the trading status of an employer, the date of its incorporation and the names of its directors:

https://beta.companieshouse.gov.uk/

(ii) Example questions and validation

Question	Validation
Is there an employment link?	Contract of employment or evidence of holding of an office, e.g. directorship. Please note that some scammers may well attempt to set up bogus contracts of employment.

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 does not require evidence of earnings from the participating employer. The earnings requirement is merely that there is evidence of regular earnings irrespective of their source. Alternative evidence (such as contracts of employment) may be required for zero-hours workers.
If you are **not** employed by an employer that participates in the receiving scheme, please can you provide a brief explanation of your reasons for wishing to transfer your benefits to this scheme?	Membership of an OPS might be extended to non-employees, though this might typically be for defined purposes such as schemes intended for particular affinity groups. OPS are not usually marketed to third parties. Lack of association between the member and the sponsoring employer or its industry sector should invite further enquiry.
What is the date of incorporation of the principal employer for the receiving scheme?	Letterhead paper or internet research to evidence that the employer was already in existence before the member asked to transfer.
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.
What is the business, service or trade provided by the principal employer for the receiving scheme?	Letterhead paper or internet research.
Is the principal employer an active or dormant company?	Internet research or Companies House WebCHeck – Pension scams might involve a dormant company to suggest an employment link. It should be noted that there is a risk to transferring trustees that 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.

(d) Geographical Link

(i) Purpose

In an OPS, the employer and the member would normally operate from a similar location. Larger companies may operate from a number of locations; however, your research should indicate when this is the case.

(ii) Example questions and validation

Question	**Validation**
If you are employed by an employer that sponsors the receiving scheme, please provide the address of your usual place of work for the employer.	Letterhead paper, internet research or member question for other evidence.
Is the employer/provider/administrator address near to the member's home address?	Letterhead paper, internet research or member question for other evidence.

(e) Marketing methods

(i) Purpose

OPSs are not generally marketed to a potential member. Cold calling or other unsolicited approaches may be risk indicators.

(ii) Example questions and validation

Question	Validation
How did you become aware of the provider/ adviser/receiving scheme? Did the receiving scheme/provider/adviser make the first contact? What was the method of communication?	Request to the member in writing or by telephone.
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.	Request to the member in writing or by telephone.
During the transfer process, has the receiving scheme (or its administrators) contacted you by post or in person with official documentation or has all communication been by text, email and/or telephone?	Request to the member in writing or by telephone.
Has a courier been sent to your home to collect signed documentation?	Request to the member in writing or by telephone.
What do you want to achieve through the transfer that you can't in your current scheme?	Request to the member in writing or by telephone.
Have you received any promotional material or information about the receiving scheme? If so, please provide copies.	Request to the member in writing or by telephone.
Have you been pressured by anyone to make a quick decision about transferring your pension?	Request to the member in writing or by telephone.
What have you been told about the investments of the scheme?	Request to the member in writing or by telephone.

(f) Provenance of receiving scheme

(i) Purpose

An OPS 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 request was made. 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 purposes.

The recency of a scheme's establishment should not in itself be taken as evidence of scam intent. As previously expressed, as broad a range of factors as possible should be considered in any due diligence exercise.

(ii) Example questions and validation

Question	Validation
Date on which the receiving scheme was registered with HMRC.	Copy of Registration certificate and print-off from HMRC Scheme Administrator website.

Request copies of the receiving scheme's governing documentation and formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts.	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 and the member eligibility provisions.
Is the transfer being requested in advance of the scheme being registered / established?	Compare date of transfer request with date of scheme establishment.
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.
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.
Is the receiving scheme/administrator run from a 'virtual' office?	Internet research.
Is the receiving scheme/administrator quoting only a PO Box address?	Internet research.
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.	For an OPS this is poor practice (and your internal controls may not allow this) and might be suspicious - seek a written explanation.
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: • 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 • Long lease (i.e. illiquid) investments that clearly do not match likely access timelines • 'Guaranteed' investment returns that seem unrealistic in current markets Lack of diversification of investments might suggest that the investment strategy has not been designed for the member's interests.
Are there links with other administrators/schemes /providers for 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.

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 about the scheme and prospective transfer as the lawyer giving the opinion might have had limited instructions or only given a restricted or caveated view. Scammers might go to the trouble of instructing reputable lawyers to prepare an opinion and/or scheme documents in order to suggest an air of legitimacy about the scheme.
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.
Have a number of schemes been established recently from sponsoring employers with the same address?	Internet research – this might suggest suspicious activity.
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.
Have a number of schemes been established by administrators with the same address?	Internet research – this might suggest suspicious activity.
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.
Is the scheme connected to an unregulated investment company or is it covered by Financial Services Compensation Scheme?	Check Financial Services Register.

6.4.2. SIPP/other Contract-Based Schemes (CBS)

When conducting due diligence on a Self-Invested Personal Pensions (SIPP) or CBS for the first time, there are a number of key areas in which information is required. Sections (a) to (d) set out what types of information should be collected and the purpose of collecting that information.

Each section sets out example questions that you can use to find the type of information that will be useful to you when making a decision about whether a scheme or operator poses a pension scam risk. You can choose which questions to use and you can ask alternative questions that will achieve the same purpose. This is to help you fit the due diligence process into your existing processes.
Next to each question is an example of the evidence that you can collect to support your decision. Although there is flexibility in the evidence you require, it is essential that evidence is collected and retained.

When you have gathered your due diligence, go to 6.6 to determine if you should proceed with the transfer.

(a) Pension Scam risk

Purpose

Pension funds under a CBS should not be accessible (without attracting tax penalties) until normal minimum pension age has been reached (save in cases of ill-health or death; or where the member has a protected pension age). The questions outlined in 6.2.3 in relation to:

- cash payments, bonuses, commission or loans;
- accessing part or all of the fund before age 55

are designed to validate that the main purpose of the scheme is to provide retirement benefits for the member.

(b) FCA Regulation

(i) Purpose

SIPP operators must be FCA registered. Appropriate registration should give substantial comfort that the scheme has not been set up for suspicious purposes.

(ii) Example questions

Question	Validation
Is the SIPP operator FCA regulated?	Check the Financial Services Register (see link at 6.2.2).
Does the provider have the appropriate FCA permissions?	Check the Financial Services Register.
Are the trustees of the receiving scheme listed with the Information Commissioner's Office as Data Controllers?	Letter-headed paper; request other evidence of registration.
Is the transfer into the SIPP advised by the same company or individuals who are administering the SIPP? (note that such conflict of interest is a risk factor, but not necessarily a red flag as is the fact that certain transfers (non-safeguarded benefits) may not require advice from an FCA regulated adviser).	Request to the member by telephone or in writing.

(c) Marketing methods

(i) Purpose

Although SIPPs are actively marketed, it would be very unusual for schemes to contact prospective members through unsolicited calls.

(ii) Example questions

Question	Validation
How did you become aware of the adviser/receiving scheme? Did sales agents for the underlying investment or the receiving scheme/adviser make the first contact?	Request to the member in writing or by telephone.
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.	Request to the member in writing or by telephone.
During the transfer process, has the receiving scheme (or its administrators) contacted you with official documentation by post or in person or has all communication been by text, email and/or telephone?	Request to the member in writing or by telephone.

Has a courier been sent to your home to collect signed documentation?	Request to the member in writing or by telephone
What do you want to achieve through the transfer that you can't in your current scheme?	Request to the member in writing or by telephone.
Have you received any promotional material or information about the receiving scheme? If so, please provide copies.	Request to the member in writing or by telephone.
Have you been pressured by anyone to make a quick decision about transferring your pension?	Request to the member in writing or by telephone.
What have you been told about the investments of the scheme?	Request to the member in writing or by telephone

(d) Provenance of receiving scheme

(i) Purpose

SIPPs or CBS set up for pension scam purposes might have been set up recently (i.e. within the last six months.) They may even have not been set up before the transfer request is made. The administrator may also have been set up recently. They may also be operating from 'virtual' offices or using PO Boxes for correspondence purposes.

The recency of a scheme's establishment should not in itself be taken as evidence of scam intent. As previously expressed, as broad a range of factors as possible should be considered in any due diligence exercise.

(ii) Example questions

Question	**Validation**
Date on which the receiving scheme was registered with HMRC.	Copy of Registration certificate and print-off from HMRC Scheme Administrator website.
Request copies of the receiving scheme's governing documentation and formal scheme documents e.g. trust deed and rules, member booklet.	If these documents are not forthcoming, this may indicate a risk of pension scam. If these documents are supplied, check them for any obvious inconsistencies e.g. in the identity of the administrator and the eligibility provisions.
Is the transfer being requested in advance of the scheme being registered / set up?	Compare date of transfer request with date of scheme establishment.
Name and address of the scheme administrator for the receiving scheme and (if appropriate) company registration number.	If the scheme administrator for the receiving scheme is a company, print-off from Companies House WebCHeck.
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.
Is the receiving scheme / administrator run from a 'virtual' office?	Internet research.

Is the receiving scheme / administrator quoting only a PO Box address?	Internet research.
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 a written explanation.
Has the scheme or administrator been linked to investments linked to high scam risk?	Internet research. Example scam risk investments include: • 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 • Long lease (i.e. illiquid) investments that clearly do not match likely access timelines • 'Guaranteed' investment returns that seem unrealistic in current markets Lack of diversification of investments might suggest that the investment strategy has not been designed for the member's interests.
Are there links with other administrators / schemes / providers for 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.
Have a number of schemes been established recently from sponsoring employers with the same address? Please note that SIPPs will not have sponsoring employers.	Internet research – this might be suspicious.
Is the director of the sponsoring employer also a director of other companies established at the same time? Please note that SIPPs will not have sponsoring employers.	Companies House WebCHeck – this might be suspicious.
Have a number of schemes been set up by administrators with the same address?	Internet research – this might be suspicious.
Have a number of schemes been set up recently from the same address?	Companies House WebCHeck and review director and address information this might be suspicious.
Is the scheme connected to an unregulated investment company or is it covered by the Financial Services Compensation Scheme?	Check Financial Services Register.

6.4.3. Small Self-Administered Schemes (SSAS)

A SSAS is an OPS of a type which, until 5 April 2006, was recognised by HMRC as being subject to the provisions of Chapter 20 of IR12 (2001), "Occupational Pension Schemes Practice Notes". Though there is no longer a formal definition of SSAS in legislation or elsewhere, the term continues to be used in regard to an OPS with fewer than twelve members, where all the members are trustees and take responsibility for determining how monies held by the scheme should be invested. This follows the description of 'relevant small scheme' given at Part 1 of The Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015 No. 879).

When conducting due diligence on a SSAS for the first time, there are a number of key types of information to consider.

Sections (a) to (f) set out what types of information should be collected and the purpose of collecting that information.

Each section sets out example questions that you can use to find the type of information that will be useful to you when making a decision about whether a scheme or administrator poses a pension scam risk. You can choose which questions to use and you can ask alternative questions that will achieve the same purpose. This is to help you fit the due diligence process into your existing processes.

Next to each question is an example of the evidence that you can collect to support your decision. Although there is flexibility in the evidence you require, it is essential that evidence is collected and retained.

Unlike SIPPs, SSAS do not require the presence of a regulated 'operator' in order to be established and maintained. Professional involvement is common, however, in the form of SSAS-specific scheme administrators, authorised practitioners or independent trustees. In some cases, the scheme administrator might be the sponsoring employer of the SSAS, or a member; typically, in such examples there will be an appointed 'authorised practitioner' with wide experience of SSAS. The role of authorised practitioners has arguably been strengthened since September 2014, when HMRC introduced the requirement for a scheme administrator to be 'fit and proper', evidence of which might be shown by the appointment of an adviser with pensions experience. Many such practitioners might be members of an industry group such as the Association of Member-Directed Pension Schemes (AMPS), which might be taken into account in due diligence processes though not relied on in isolation as evidence of a receiving scheme's propriety.

When you have gathered your due diligence, go to 6.6 to determine whether you should proceed with the transfer.

(a) Pension Scam risk

Purpose

Pension funds under a SSAS should not be accessible (without attracting tax penalties) until normal minimum pension age has been reached (save in cases in cases of ill-health or death; or where the member has a protected pension age). The questions outlined in 6.2.3 in relation to:

- cash payments, bonuses, commission or loans;
- accessing part or all of the fund before age 55

are designed to validate that the main purpose of the scheme is to provide retirement benefits for the member.

(b) Regulatory

(i) Purpose

There is no requirement for SSAS or its administrator to be FCA-registered but trustees of all OPSs must be listed as data controllers with the Information Commissioner for Data Protection purposes. TPR has oversight of OPS and administration.
Insurance companies that provide occupational schemes must be FCA-registered. There is a substantial due diligence process involved, and clear rulebook to follow. Appropriate FCA registration should give substantial comfort that the scheme has not been established for suspicious purposes.

(ii) Example questions and validation

Question	How to gather information
Is this an insured pension scheme? If yes, is provider FCA regulated?	Check the Financial Services Register (see link at 6.2.2).
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.

(c) Employment link

(i) Purpose

As a SSAS is a type of OPS, there should normally be some employment link, with at least one member. A lack of identifiable link may be a risk indicator.

As mentioned elsewhere in the Code, the government proposed in 2017 that the statutory right to transfer to an occupational pension scheme would be predicated on factors including a genuine employment link to the receiving scheme, including evidence of regular earnings from that employment. The details of that measure are still awaited at the time of this revision to the Code. Though it should be expected that, in most cases, a member of an occupational pension scheme should be employed by a sponsoring employer, there can be genuine exceptions in the case of a SSAS. It is not uncommon for there to be members of a SSAS who are, for example, members of a family which controls the sponsoring employer, but who are not employed by that company. Though the absence of a statutory right should be noted in a ceding scheme's due diligence process, it should not in itself be taken as grounds for regarding the transfer as suspicious. Good due diligence based upon the Code is an evaluation of all relevant factors, rather than a narrow selection. The government's response to its pension scam consultation was clear that, wherever possible, legitimate transfers should not be blocked.

It should also be noted that SSAS have historically appealed, and still primarily appeal, to controlling directors of privately-owned companies. Such directors might not be remunerated in patterns common to arm's length employees, and perhaps might choose not to be remunerated at all for a time. Again, such factors should be taken account of in the broad context of overall due diligence.

The pension scams consultation has also given rise to the principle that the registering of new occupational pension schemes should be confined to those sponsored by an active employer; this would exclude schemes established by dormant employers. HMRC have also recently acquired additional powers to de-register schemes sponsored by dormant employers. This does not mean that a scheme sponsored by a previously active employer which has become dormant is not appropriate for continued registration. A registered pension scheme is independent of its sponsoring employer and should be expected to be considered for registration purposes by reference to its adherence to those conditions under which schemes gain and maintain registered status.

The website of Companies House can be a useful facility for checking factors such as the trading status of an employer, the date of its incorporation and the names of its directors:

https://beta.companieshouse.gov.uk/

(ii) Example questions

Question	Validation
Is there an employment link?	Request copy of contract of employment. Please note that some scammers may well attempt to set up bogus contracts of employment.
Is there evidence of earnings from an employer sponsoring the receiving scheme?	Request 3 months' payslips. Please note however that following the 2016 Hughes v Royal London High Court judgment, the earnings requirement for a statutory transfer does not require evidence of earnings from the participating employer. The earnings requirement is merely that there is evidence of regular earnings irrespective of their source. Alternative evidence (such as dividend payments) may be required for SSAS members who may not be in receipt of salary payments.
If you are **not** employed by an employer that sponsors the receiving scheme, please can you provide a brief explanation of your reasons for wishing to transfer your benefits to this scheme? What connection do you have with the receiving scheme's sponsoring employer or members?	Membership of a SSAS might be extended to non-employees, but these would normally be connected with existing members, e.g. relatives of the directors of a family-owned company that sponsors the SSAS. SSAS are not usually marketed to third parties. Lack of connection between members should invite further enquiry.
Is the sponsoring employer an active or dormant company?	Internet research or Companies House WebCHeck – Pension scams might involve a dormant company to suggest an employment link. It should be noted that there is a risk to transferring trustees that 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.

(d) Geographical Link

(i) Purpose

As above, an employer from a different location may be a sign that the SSAS is not being used for the purpose of an OPS.

(ii) Example questions

Question	Validation
If you are employed by an employer that sponsors the receiving scheme, please provide the address of your usual place of work for the employer?	Letterhead paper, internet research or member question for other evidence.
Is the provider/administrator address near to the member's home address?	Letterhead paper, internet research or member question for other evidence.

(e) Marketing methods

(i) Purpose

SSAS are not generally marketed to potential members, therefore cold calling or other unsolicited approaches may indicate that the SSAS is not being used for the purpose of an OPS.

(ii) Example questions

Question	Validation
How did you become aware of the adviser/receiving scheme? Did sales agents for the underlying investment or the receiving scheme/adviser make the first contact? What was the method of communication?	Request to the member in writing or by telephone.
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.	Request to the member in writing or by telephone.
During the transfer process, has the receiving scheme (or its administrators) contacted you with official documentation or has all communication been by text, email and/or telephone?	Request to the member in writing or by telephone.
Has a courier been sent to your home to collect signed documentation?	Request to the member in writing or by telephone.
What do you want to achieve through the transfer that you can't in your current scheme?	Request to the member in writing or by telephone.
Have you received any promotional material or information about the receiving scheme? If so, please provide copies.	Request to the member in writing or by telephone.
Have you been pressured by anyone to make a quick decision about transferring your pension?	Request to the member in writing or by telephone.
What have you been told about the investments of the scheme?	Request to the member in writing or by telephone.

(f) Provenance of receiving scheme

(i) Purpose

A SSAS intended for pension scam purposes might have been established very recently (e.g. within the last six months.) It may even have been established after the transfer request was made. 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 purposes.

The recency of a scheme's establishment should not in itself be taken as evidence of scam intent. As previously expressed, as broad a range of factors as possible should be considered in any due diligence exercise.

(ii) Example questions

Question	Validation
Date on which the receiving scheme was registered with HMRC.	Copy of Registration certificate and print-off from HMRC Scheme Administrator website.

Request copies of the receiving scheme's governing documentation and formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts.	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 and the member eligibility provisions.
Is the transfer being requested in advance of the scheme being registered/established?	Compare date of transfer request with date of scheme establishment.
Name and address of the scheme administrator 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.
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.
Is the receiving scheme/administrator run from a 'virtual' office?	Internet research.
Is the receiving scheme/administrator quoting only a PO Box address?	Internet research.
Is the administrator also FCA regulated? Although FCA regulation is not required for SSAS, the fact of regulation by FCA may provide additional security.	Check FCA register.
Has the scheme or administrator been linked to investments identified as posing high scam risk?	Internet research. Example scam-risk investments include: • 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 • Long lease (i.e. illiquid) investments that clearly do not match likely access timelines • 'Guaranteed' investment returns that seem unrealistic in current markets) Lack of diversification of investments might suggest that the investment strategy has not been designed for the member's interests.
Are there links with other administrators/schemes/providers for 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.

Does the receiving scheme 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 about the scheme and the prospective transfer as the lawyer giving the opinion might have had limited instructions or only given a restricted or caveated view. Scammers might go to the trouble of instructing reputable lawyers to prepare an opinion and/or scheme documents in order to suggest an air of legitimacy about the scheme.
Have a number of schemes been established recently from sponsoring employers with the same address?	Internet research – this might suggest suspicious activity.
Is the director of the sponsoring employer also a director of other companies established at the same time?	Companies House WebCHeck – this might suggest suspicious activity.
Have a number of schemes been established by administrators with the same address?	Internet research – this might suggest suspicious activity.
Have a number of schemes been established recently from the same address?	Companies House WebCHeck and review director and address information – this might suggest suspicious activity but could also indicate a large, well-established SSAS practitioner.
Is the scheme connected to an unregulated investment company or is it covered by Financial Services Compensation Scheme?	Check Financial Services Register.

6.4.4. Qualifying Recognised Overseas Pension Schemes (QROPS)

A QROPS is the only form of overseas pension scheme to which a UK registered pension scheme can pay a "recognised transfer". If an overseas pension scheme does not meet the conditions of a QROPS, a transfer to that scheme will not be a recognised transfer and will therefore constitute an unauthorised payment from the UK scheme. The government's response of August 2017 to the pension scams consultation proposed restricting the statutory right to transfer to QROPS in certain circumstances. The government indicated that it would engage with industry stakeholders and others on the details of the restriction. The government also said it aims to consult on the draft regulations setting out the details of the QROPS restriction.

For an overseas pension scheme to receive and maintain QROPS status, it must meet certain requirements as detailed in UK legislation and as monitored and enforced by HMRC. Before making a transfer payment to a QROPS, the transferring scheme's managers must be satisfied that the receiving scheme has QROPS status. It should be noted that although HMRC maintains a list of ROPS, managers of individual QROPS can opt not to have their scheme included on that list. In addition, just because a scheme appears on the list, this does not mean that it is appropriate to transfer. Full due diligence checks should still be undertaken.

It should be noted that HMRC's list of ROPS is not claimed to be a list of QROPS. Any overseas pension scheme seeking QROPS status does so on the basis of declarations to HMRC by reference to conditions of eligibility, rather than as an application, for evaluation and acceptance, by HMRC. This means that HMRC is unable to confirm that any overseas pension scheme is a ROPS or a QROPS; only that it has made the relevant declarations as relating to ROPS status.

HMRC's list of ROPS can be viewed via the link below. It is recommended that, irrespective of the level of due diligence carried out prior to the making of a transfer payment to a QROPS, the status of the receiving scheme should be checked on the date of the proposed payment to that scheme, and that a record of that check is made.

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.). The check should include making sure that the payment is going to the correct country for the registered QROPS. Payment to a clone scheme is likely to be deemed an unauthorised payment by HMRC.

https://www.gov.uk/government/publications/list-of-qualifying-recognised-overseas-pension-schemes-qrops/list-of-recognised-overseas-pension-schemes-notifications

Unlike, for example, "SIPP" or "SSAS", the term "QROPS" does not signify whether the scheme is of the occupational or personal type. The status of a particular QROPS should be ascertained during the due diligence stage, in any request for payment of a transfer from a UK scheme to a QROPS.

Rather than complicate this Code by offering separate sets of due diligence questions for both occupational QROPS and those comparable to personal pension schemes, it is suggested that, broadly, those due diligence questions detailed in 6.4.3 in relation to SSAS should be considered, in regard to QROPS. The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list.

Before paying a transfer to a QROPS, receiving scheme managers should ensure that the transferring member has lodged with them a completed form APSS263, as issued by HM Revenue & Customs. Some receiving schemes may include the APSS263 within their own transfer application forms.

6.5. During the Due Diligence Process

6.5.1. Member Contact

As outlined in 6.2.3, although it is preferable to obtain information in writing to support your due diligence in order to retain an audit trail of the information requested and the decision you have made, it is possible that, during the due diligence process, and as early as possible, you may wish to contact the member by telephone to discuss the matter with them. Some trustees and administrators have found that when the "transfer journey" is fully discussed with the member this can enable the member to fully understand the risks in transferring and enable them to reassess their position or to seek fully regulated advice. This approach does not constitute cold calling. Alternatively, when concerns remain trustees and administrators can suggest that the member calls TPAS (now part of the Money and Pensions Service) to talk through the proposed transfer and the warning signs. TPAS will provide an impartial view on the transfer, and this might overcome any concerns that the due diligence process is a delaying tactic to frustrate the transfer. Be aware that in some cases members might have been "coached" by a scammer as to what to say when contacted by a ceding scheme. Calls should be recorded where possible.

6.5.2. Withdrawal of transfer application

It is possible that, during the due diligence process, the member will withdraw their transfer request. As outlined above, this could be because the awareness 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 and it is not in their best financial interests to proceed.

Where this happens, no further action is required in respect of the transfer, although it would be worthwhile documenting any concerns revealed by any due diligence undertaken and retaining 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 Appendix B.

6.5.3. Extensions

If the trustees or administrators of a transferring scheme that is an OPS need more time to carry out the due diligence steps in the Code of Good Practice, then it may be possible to apply to TPR for an extension of the normal six-month time period for payment of transfers. This needs to be considered in the early stages of 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. Further details are set out in 4.4.1. Where an extension is applied for, the trustees should then notify the member - see Appendix A (vi).

6.6. Determining Pension Scam Risk

Once you have completed the due diligence process as set out in 6.2, 6.3 and 6.4 as appropriate, and if the member has not withdrawn their transfer request, you need to decide how to proceed.

6.6.1. Governance

Trustees/providers need to ensure they have appropriate governance processes in place to determine the risk of a pension scam and whether a transfer should proceed. This may include discussing cases with law enforcement (see 6.7) and HMRC and taking independent legal advice where required.

Challenges to the decision may be received. These may take the form of schemes writing directly, or members or customers deciding to make a complaint. Therefore, it is necessary to ensure there is sufficient support and governance in place to deal with such challenges or complaints. Being able to show that the principles in this Code have been followed should assist in any defence against allegations that the decision has been made incorrectly; though as stated on the cover page, following the Code might not prevent a claim being brought against a party.

All concerns, any written evidence and notes or recording of calls should be documented. A sample decision sheet has been provided to help organisations with this process in Appendix B.

6.6.2. Determination

The individual(s) responsible for making the determination should collate and review the information gathered during the due diligence process. The decisions needed are set out below and summarised in the flow diagram at the end of this section.

If there has been a failure to supply information or respond to information requests, you should consider what inferences can be drawn from the particular failures to provide evidence.

If, in light of all the information collated, you consider that there is no material risk of a pension scam, you should proceed to pay the transfer.

If you consider that there is a material risk of a pension scam, you should consider whether the member has a right to transfer, meaning there is a duty to process the transfer.

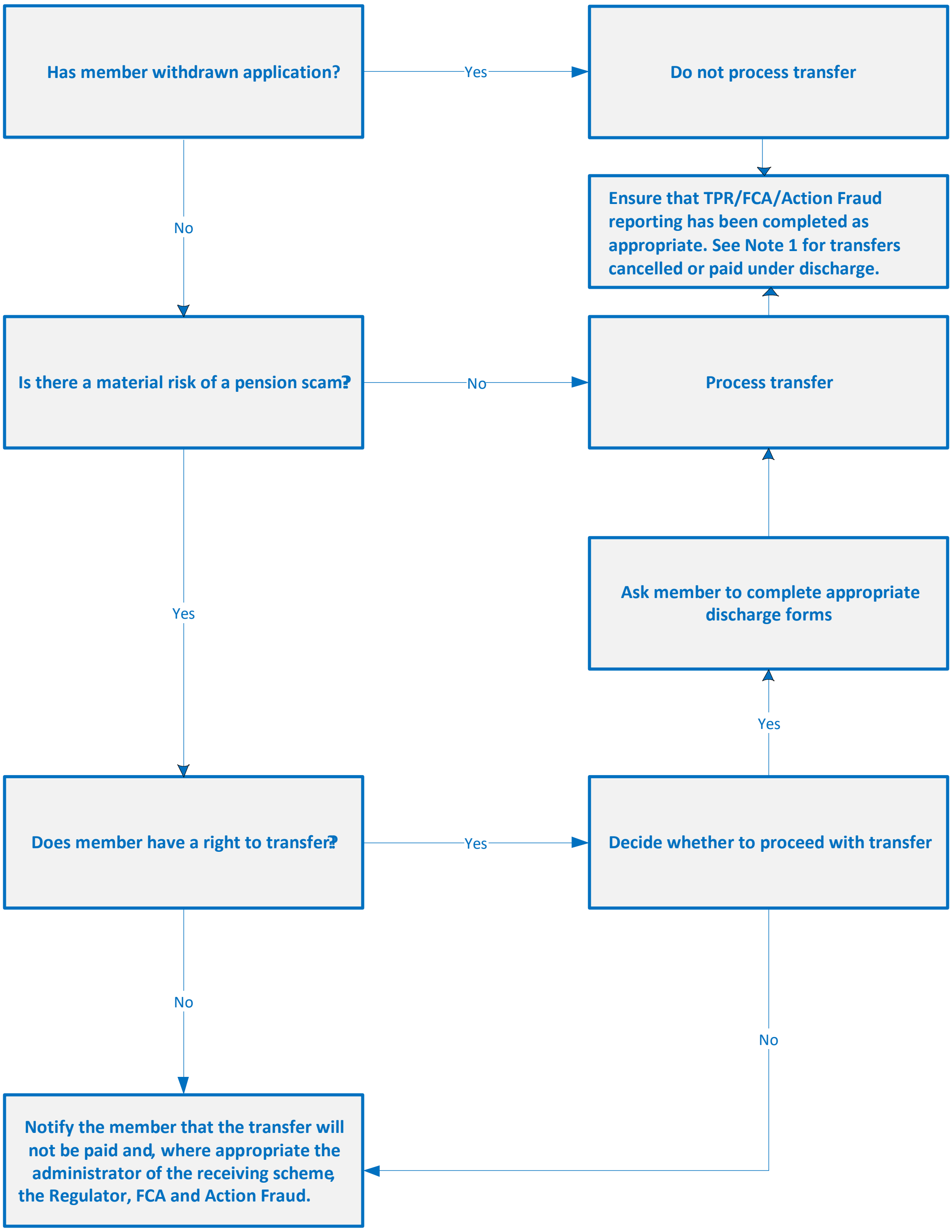
A right to transfer could be either a statutory right, or a right arising under the transferring scheme rules (which may be discretionary). For QROPS transfers, this may require specialist legal expertise or language skills. Information on how the existence of a transfer right should be assessed is set out in 4.2. If there is a discretionary transfer power, the information gathered during the due diligence process may be considered when deciding whether to agree to the transfer.

If you consider that the member does not have a right to transfer, you should proceed to 6.7. You should be prepared to explain to the member why you believe that they do not have a right to transfer.

If the member does have a right to transfer, but you consider that there is a material risk of a pension scam, you will need to make a judgment about whether to proceed with the transfer. This will involve an assessment of the risks associated with either blocking the transfer or allowing it to proceed. These are summarised in 4.5. You may also wish to consider the extent to which 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 you then decide that the transfer should not be made, proceed to 6.7. You should be prepared to explain to the member why the transfer is not being made.
- If you decide that the transfer should be made, proceed to pay the transfer. To mitigate the risk to you, ensure that a suitably robust discharge is obtained from the member before the transfer is paid - see 6.10.

If, during this process, you find that you have made a transfer in good faith that you now deem to be suspicious, it should also be reported to Action Fraud, FCA and TPR - covered in 6.7 and 6.8.



Note 1:

- Even if a transfer does not proceed or proceeds under discharge, the FCA, would still like to hear about them. It is invaluable intelligence and may prevent future scams. For the FCA, concerns can be submitted via the following link: www.fca.org.uk/consumers/report-scam-unauthorised-firm. For TPR, details can also be passed to them via: wb@tpr.gov.uk. Action Fraud reporting is outlined in Appendix D.

6.7. Refusing a transfer and reporting

If you determine, under 6.6, that the transfer should not proceed, you should:

- Write to the member and inform them, with reasons, that you are unable to make the transfer (e.g. risk of receiving scheme not being a genuine pension scheme too high) – see Appendix A (iv). If there is no statutory right to transfer but the rules contain a discretion to pay, it should be explained that the discretionary power has been considered.

- Where appropriate, e.g. where there is an active letter of authority, write to the administrator/adviser and inform them that you are unable to make the transfer – see Appendix A (v).

- Report the scheme and administrator to FCA via: www.fca.org.uk/consumers/report-scam-unauthorised-firm and to Action Fraud as outlined in Appendix D.

- Report individuals who appear to be undertaking regulated advice but are not authorised to do so via:

http://www.fca.org.uk/consumers/protect-yourself/report-an-unauthorised-firm.

Suspicious Activity Reporting (SAR)
Queries have been raised on whether schemes should also make Suspicious Activity Reports (SAR), where transfer requests raise suspicions of potential crime, in particular the receipt of a "Response 2" type reply from HMRC (see 6.3.1 for further details on HMRC responses). The National Crime Agency UK Financial Intelligence Unit (UKFIU) has recommended that the SAR reporting system is used solely for reporting suspected money laundering and terrorist finance. If someone suspects a pension scam or a fraud, it should be reported in the normal way as set out in this Code. However, the UKFIU appreciates that if the subjects are moving or handling the proceeds of fraud, it becomes a money laundering offence and a SAR may be appropriate. The Law Commission has been consulting on how to improve the SAR process.

In this regard, please refer to Section 6.2.2 for specific guidance in respect of overseas advisers who are advising UK resident customers to transfer their pension without the appropriate permissions.

6.8. Reporting to The Pensions Regulator

Where you have refused a statutory transfer payment for an occupational pensions scheme, 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 should notify TPR at wb@tpr.gov.uk (see 4.4.1).

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.

6.9. Member appeals

A member may challenge a decision to refuse a transfer payment. 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 or failure to provide information that led to the transfer being refused. If so, you need to consider whether it is now reasonable to proceed with the transfer.

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 pay the 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' (see 6.10).

6.10. Discharge forms and insistent members

When dealing with an insistent member, you should, if possible, ask the member to call TPAS (now part of the Money and Pensions Service) 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, or where you decide to make a transfer despite the existence of concerns that there is a risk of a pension scam, you should ask the member to complete a discharge form. You should ensure that the discharge form that the member signs is sufficiently robust to reduce your risk.

An example discharge form is set out at Appendix C. 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.

6.11. Internal “white list” approach

6.2.1 asks “(ii) Has your organisation currently identified the administrator/scheme and “known associates” (director, shareholders) as <u>not</u> presenting a risk of pension scam activity?” and “(iii) Has your organisation currently identified this scheme/administrator or address as suspicious?”

This section provides guidance on how trustees/providers or administrators might manage schedules of schemes deemed to present a risk or not present a risk.

Some organisations have experienced high levels of suspicious transfer requests and in processing them have built up a body of knowledge. They have used this, to determine at an early stage if they already have enough information to assess whether the transfer application is valid or could be an unauthorised payment.

It is for each organisation to decide if they wish to build and maintain a process to manage a list of organisations, scheme or individuals that do or do not present a risk of pension scams and ensure that they have robust and ongoing due diligence to support it.

Undertaking this work may significantly reduce the due diligence needed on individual transfers. Some key considerations in deciding whether to build the process are:

- the volume of transfers processed;
- the resource needed to create and maintain the lists; and
- the organisation’s general approach to risk-management.

In building the process, organisations will need to consider:

- the basis for adding an organisation, scheme or individual to a list. This could be following a decision being made to pay or refuse a transfer request, or it could also incorporate other information from law enforcement, regulatory alerts etc.;
- the appropriate sign-off to add or remove a scheme or administrator;
- how schemes and administrators will move between lists (or be removed) as new information is gathered;
- how information from external sources, e.g. industry bodies, will be incorporated;
- how information gathered will be verified, for example, where an administrator with multiple offices is added to a list, how you will ensure that all valid contact information is recorded;
- the controls needed to ensure the list is reviewed before transfers are processed and when;
- how you will ensure that staff only have access to the current list – what restrictions may be needed on printing or saving; and
- how the controls in place will be monitored.

6.12. Example letters

Example letters for various stages of this process are attached as Appendix A:

- Supporting section 6.2 and 6.4: Letters (i) and (iii)
- Supporting section 6.3.1: Letters (ii)
- Supporting section 6.7: Letters (iv), and (v).

APPENDIX A – 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 (See 6.2.2 and 6.4.)

The Pension Scam Due Diligence Process, 6.2.2 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. Some companies are promising pension scheme members that they can cash in their pension benefits early by transferring their pension savings to them.

They are also enticing people with pension loans or cash incentives. They may also be proposing that the transfer payment is invested in very 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:

- 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 wish to consider using the following additional wording when writing to members considering transferring pension funds to international SIPPs that are considered to be unfamiliar and potentially liable to be used to facilitate pension scams (in such cases the member may be based overseas):

We are aware that, in your case, you are intending to transfer to a 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 SIPPs being used to entice pension scheme members into scams.

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), who give free and impartial guidance to people with pensions, and whose details are available from this website: https://www.pensionsadvisoryservice.org.uk/.

We look forward to hearing from you.

Yours sincerely

(ii) Letter to HMRC (See 6.3)

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 may also want to 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 (See 6.2.2)

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

The Pension Scam Code Due Diligence Process, 6.2.2 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 (See 6.7)

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 (See 6.7)

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.

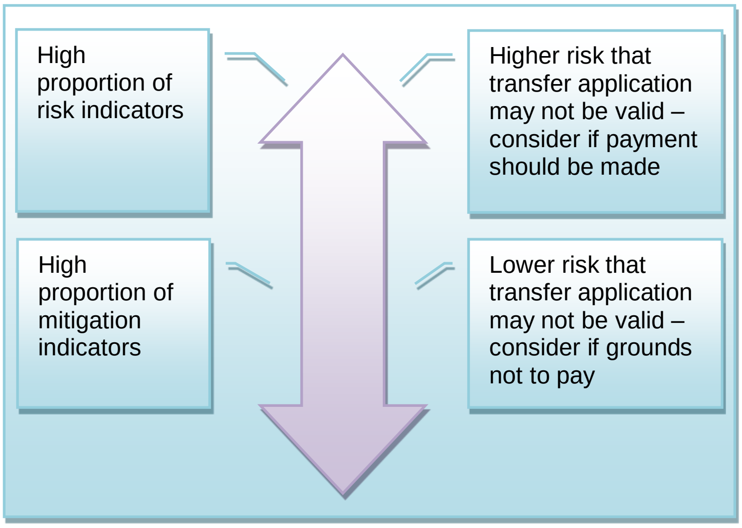
APPENDIX B – Recording Decisions

(i) Example Pension Scam Decision Sheet – Occupational Pension Scheme

Scheme Information:

Name:
Type:
Address:

Advisers and role:



Pension Scam Indicators				
Factors/Indicators (includes questions which you may have asked the member)	**Concern (✓)**	**No Concern (✓)**	**N/A (✓)**	**Evidence (explain or add link)**
A. Pension Scam Risk Initial Indicators				
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?				
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 HMRC provided confirmation that the scheme fully meets the conditions of approval?				
Has there been a high volume of transfers from a single defined benefit scheme over a short period of time?				
Is the customer transferring out of a new defined contribution arrangement soon after transferring from a defined benefit scheme?				
B. Regulatory				
Are the trustees/provider 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.)				
Is this an Insured pension scheme? If yes, is the provider FCA regulated?				
C. Employment Link				
Is there an employment link?				
Is there evidence of earnings from a participating or associated employer?				

If you are not employed by an employer that participates in the receiving scheme, please can you provide a brief explanation of your reasons for wishing to transfer your benefits to this scheme? What circumstances have brought about your being invited to become a member of this scheme?				
What is the date of incorporation of the principal employer for the receiving scheme?				
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?				
D. Geographical Link				
If you are employed by an employer that sponsors the receiving scheme, please provide the address of your usual place of work for the employer?				
Is the employer/provider/administrator address near to the member's home address?				
E. Marketing Methods				
How did you become aware of the provider/adviser/receiving scheme? Did the receiving scheme/provider/adviser make the first contact? What was the method of communication?				
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. Is this the same person who initially contacted you about the transfer?				
During the transfer process, has the receiving scheme (or its administrators) contacted you with official documentation or has all communication been by text, email and/or telephone?				
Has a courier been sent to your home to collect signed documentation?				
What do you want to achieve through the transfer that you can't in your current scheme?				
Have you received any promotional material or information about the receiving scheme? If so, please provide copies.				
Have you been pressured by anyone to make a quick decision about transferring your pension?				
What have you been told about the investments of the scheme?				
F. Receiving Scheme Provenance				
Date on which the receiving scheme was registered with HMRC.				
Request copies of the receiving scheme's governing documentation and other formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts.				

Is the transfer being requested in advance of the scheme being registered/established?				
Name and address of the scheme administrator 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?				
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.				
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 for 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?				
Is the director(s) of the sponsoring employer also a director of other companies established 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?				

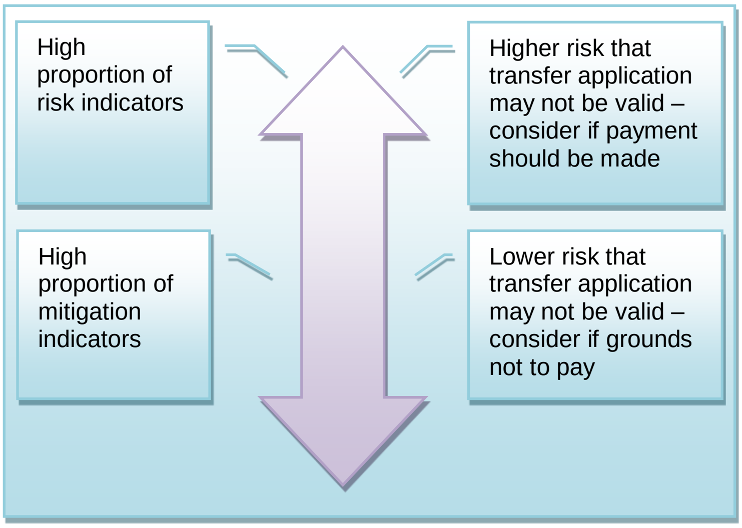
Summary: *<Administrator to set out recommendation based on due diligence carried out>*
Decision: *<Trustee/scheme manager to record decision>*

(ii) Example Pension Scam Decision Sheet – SSAS

Scheme Information:

Name:
Type:
Address:

Advisers and role:



Pension Scam Indicators				
Factors/Indicators (includes questions which you may have asked the member)	**Concern (✓)**	**No Concern (✓)**	**N/A (✓)**	**Evidence (explain or add link)**
A. Pension Scam Risk Initial Indicators				
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?				
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 HMRC provided confirmation that the scheme fully meets the conditions of registration?				
Has there been a high volume of transfers from a single defined benefit scheme over a short period of time?				
Is the customer transferring out of a new defined contribution arrangements soon after transferring from a defined benefit scheme?				
B. Regulatory				
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.)				
Is this an Insured pension scheme? If yes, is the provider FCA regulated?				
C. Employment Link				
Is there an employment link?				
Is there evidence of earnings from an employer sponsoring the receiving scheme?				

If you are not employed by an employer that sponsors the receiving scheme, please can you provide a brief explanation of your reasons for wishing to transfer your benefits to this scheme? What connection do you have with the receiving scheme's sponsoring employer or members?				
Is the sponsoring employer an active or dormant company?				
D. Geographical Link				
If you are employed by an employer that sponsors the receiving scheme, please provide the address of your usual place of work for the employer?				
Is the employer/provider/administrator address near to the member's home address?				
E. Marketing Methods				
How did you become aware of the adviser/receiving scheme? Did sales agents for the underlying investment or the receiving scheme/adviser make the first contact? What was the method of communication?				
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. Is this the same person who initially contacted you about the transfer?				
During the transfer process, has the receiving scheme (or its administrators) contacted you with official documentation or has all communication been by text, email and/or telephone?				
Has a courier been sent to your home to collect signed documentation?				
What do you want to achieve through the transfer that you can't in your current scheme?				
Have you received any promotional material or information about the receiving scheme? If so, please provide copies.				
Have you been pressured by anyone to make a quick decision about transferring your pension?				
What have you been told about the investments of the scheme?				
F. Receiving Scheme Provenance				
Date on which the receiving scheme was registered with HMRC.				
Request copies of the receiving scheme's governing documentation and other formal scheme documents e.g. trust deed and rules, member booklet, scheme accounts.				
Is the transfer being requested in advance of the scheme being registered/established?				
Name and address of the scheme administrator 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?				
Is the administrator also FCA regulated? Although FCA regulation is not required for SSAS, the fact of regulation by FCA may provide additional security.				
Has the scheme or administrator been linked to investments identified as posing high scam risk?				
Are there links with other administrators/ schemes/providers for 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?				
Have a number of schemes been established recently from sponsoring employers with the same address?				
Is the director of the sponsoring employer also a director of other companies established 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>*

(iii) Other schemes

The decision sheets above can be adapted for a CBS, SIPP or a QROPS.

APPENDIX C – 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*
*** delete as applicable*

Signed: …………………………………………………………………….………
Member name

Dated: …………………………………………………………………….………….

In the presence of:

……………………………………………………...………………………………
(Witness name – IN CAPITALS)

………………………………………………………………………………………

………………………………………………………………………………………
(Witness address)

…………………………………………………………….……………………….

(Witness signature)

APPENDIX D – Action Fraud Reporting

We have been asked by the authorities to continue to report scams and potential scams using the Action Fraud Expert Reporting Tool.

We have received feedback that industry users had found reporting difficult and it should be noted that although the tool has been updated from the previous version, it is not designed for reporting pension scams specifically, so some of the fields may seem inappropriate. We would also highlight 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.

We have also identified two key issues with the new system:

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.

We are working with Action Fraud through Project Bloom to ensure that the issues are addressed and to make the tool and the process more user friendly for organisations reporting possible pension scams, but ask you to use the tool as it currently stands for now, so that the authorities have a more holistic picture of fraud and scams activity. An update to the Code will be issued as soon as the matter has been resolved.

In addition, we 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

Document Status	**Final**

(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:

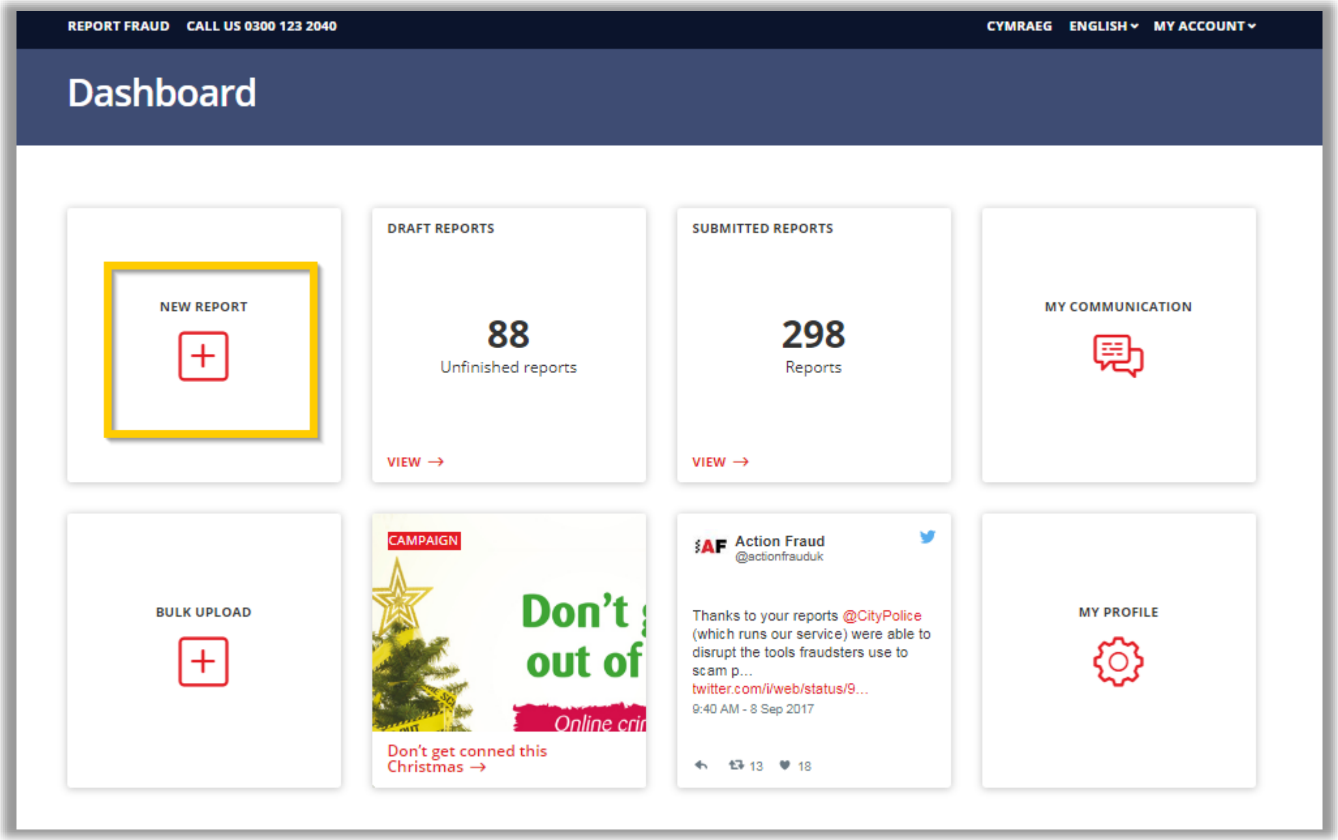
- Submit crime and information reports on behalf of a business
- Save a draft report to complete later
- Copy data to a new report
- Track status of submitted reports

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

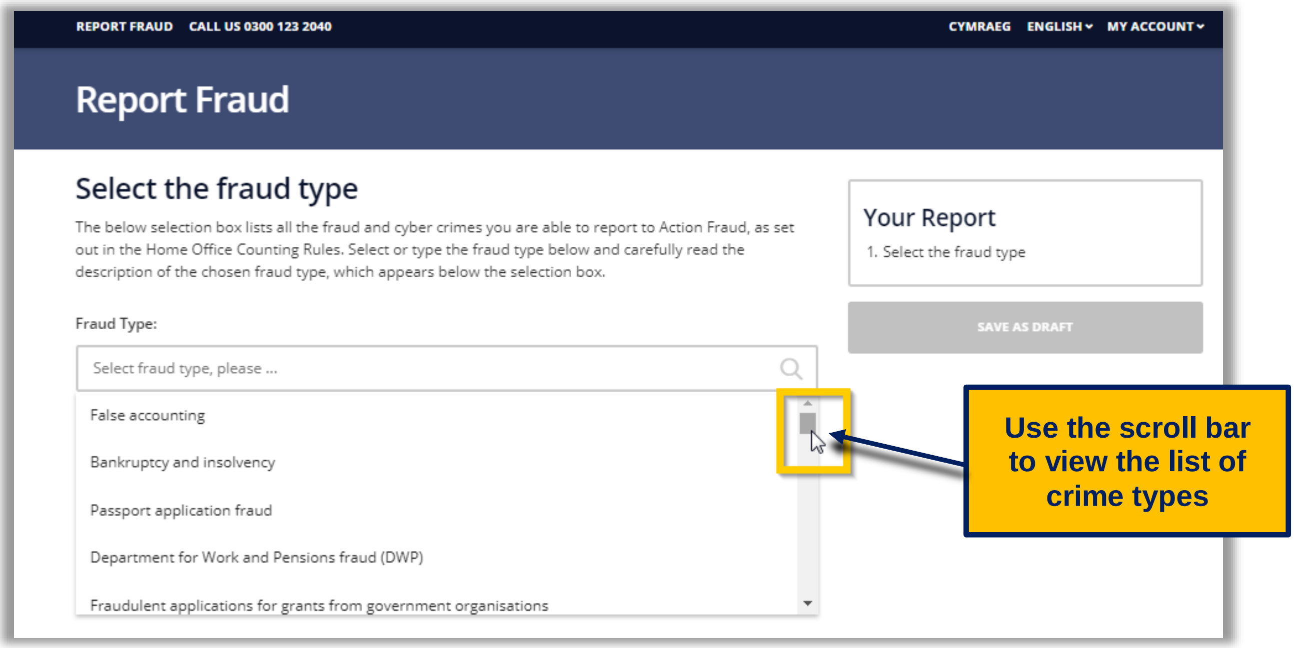
To begin a new report, select the **NEW REPORT** tile from the dashboard homepage



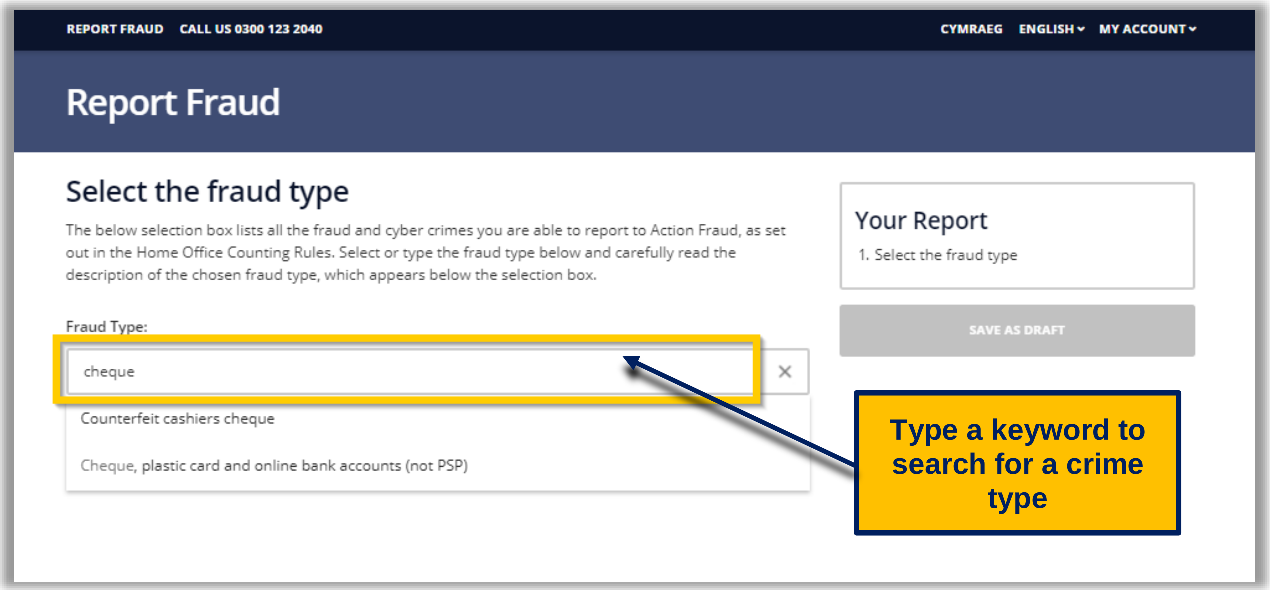
(iii) Select Crime Type

Select the crime type category for the new report, as defined in the Home Office Counting Rules for Fraud 2017.

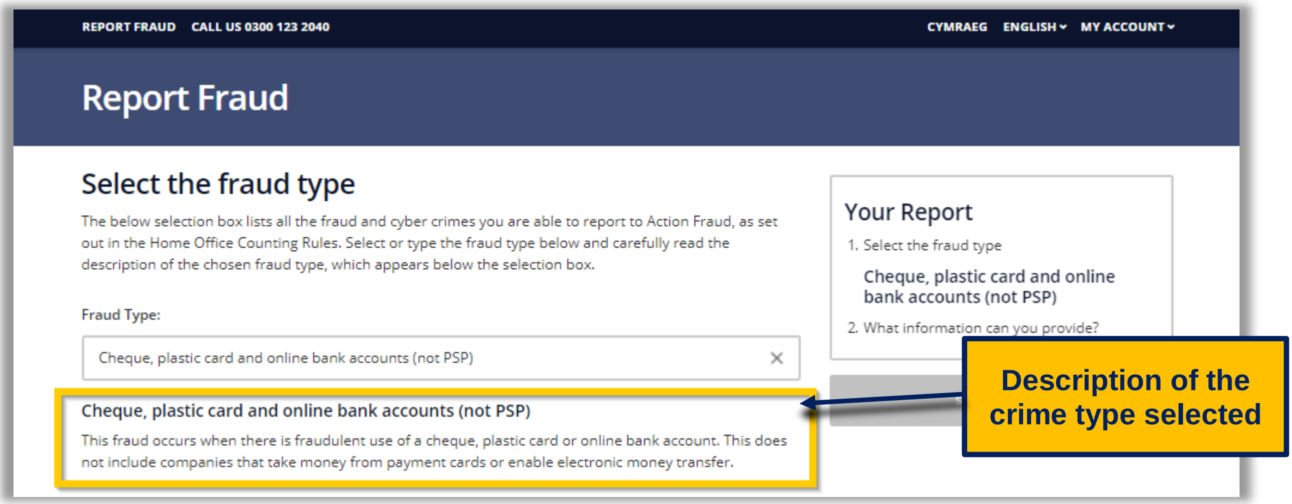
To select a crime type, click in the search box to expand the list.



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

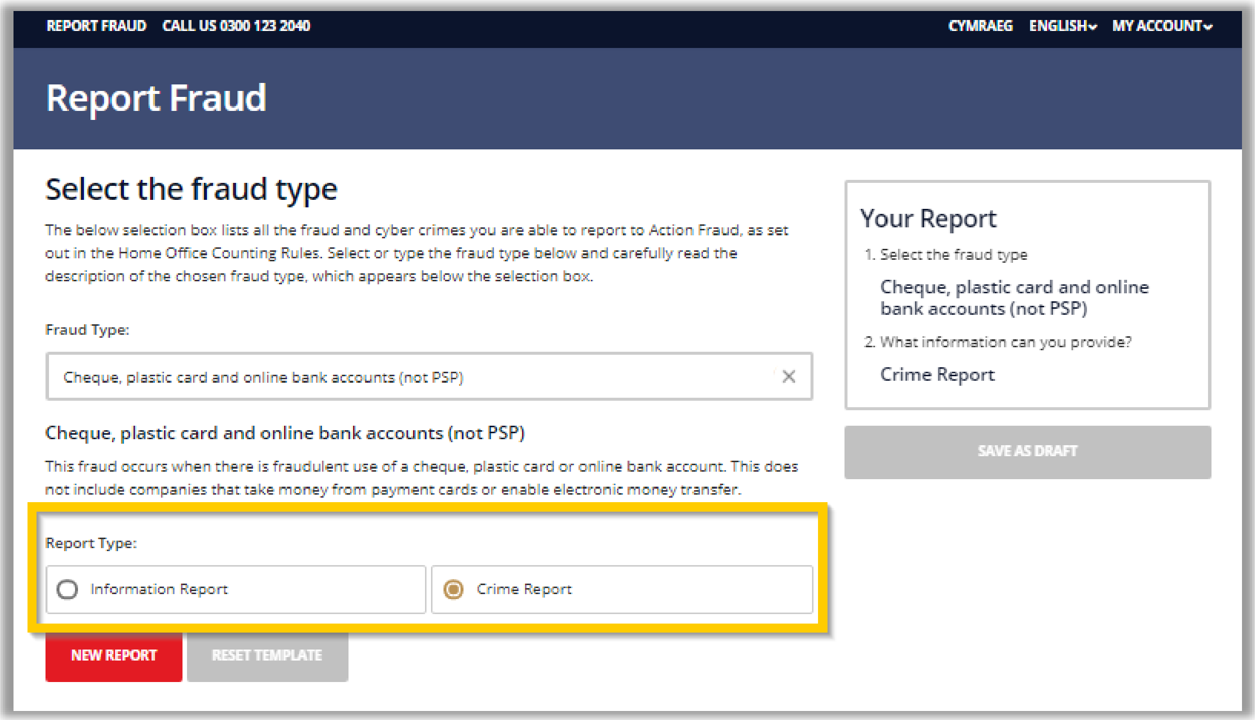


When a crime type is selected, a short description of that category will display below



(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

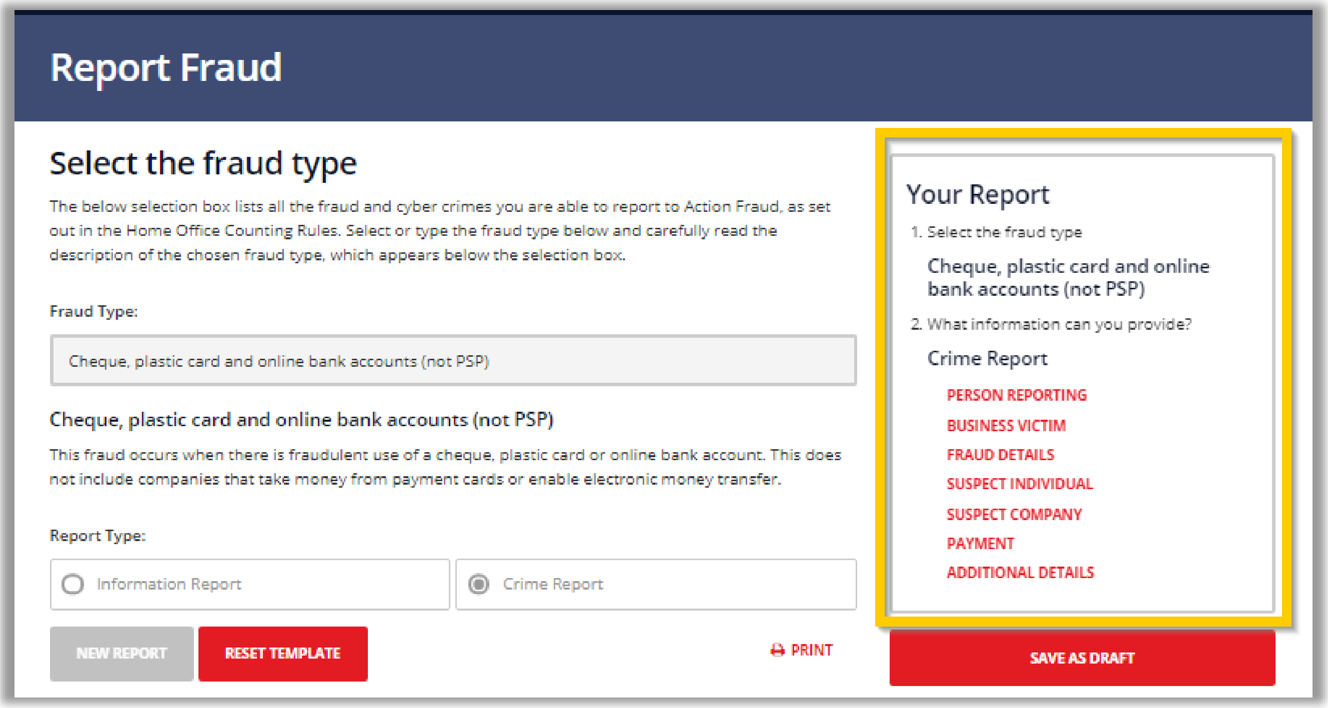
(v) Data Entry

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

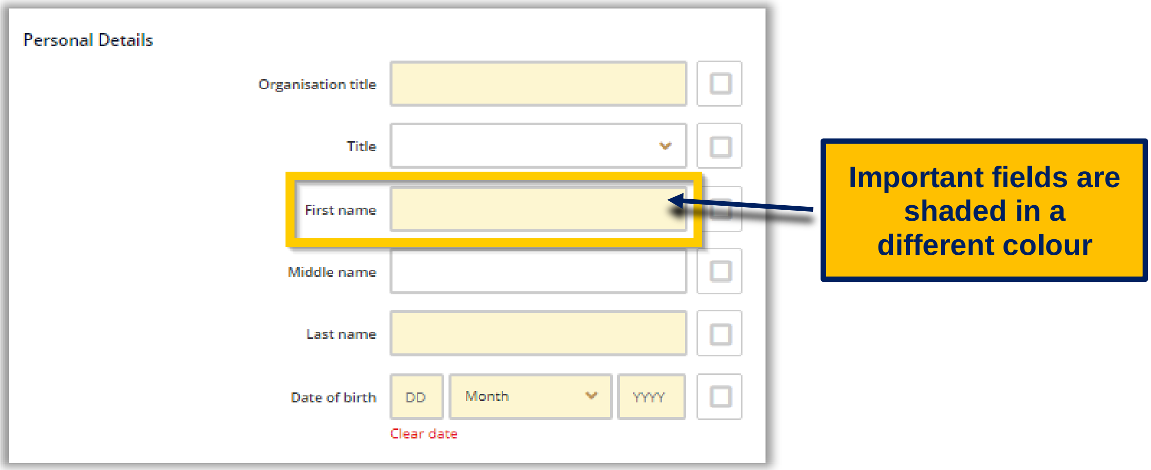
- **Suspect Individual -** details of individual suspects
- **Suspect Company -** details of suspect companies
- **Payments -** details of payments made by the victim
- **Additional Details -** free text field to provide a summary of the report

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.

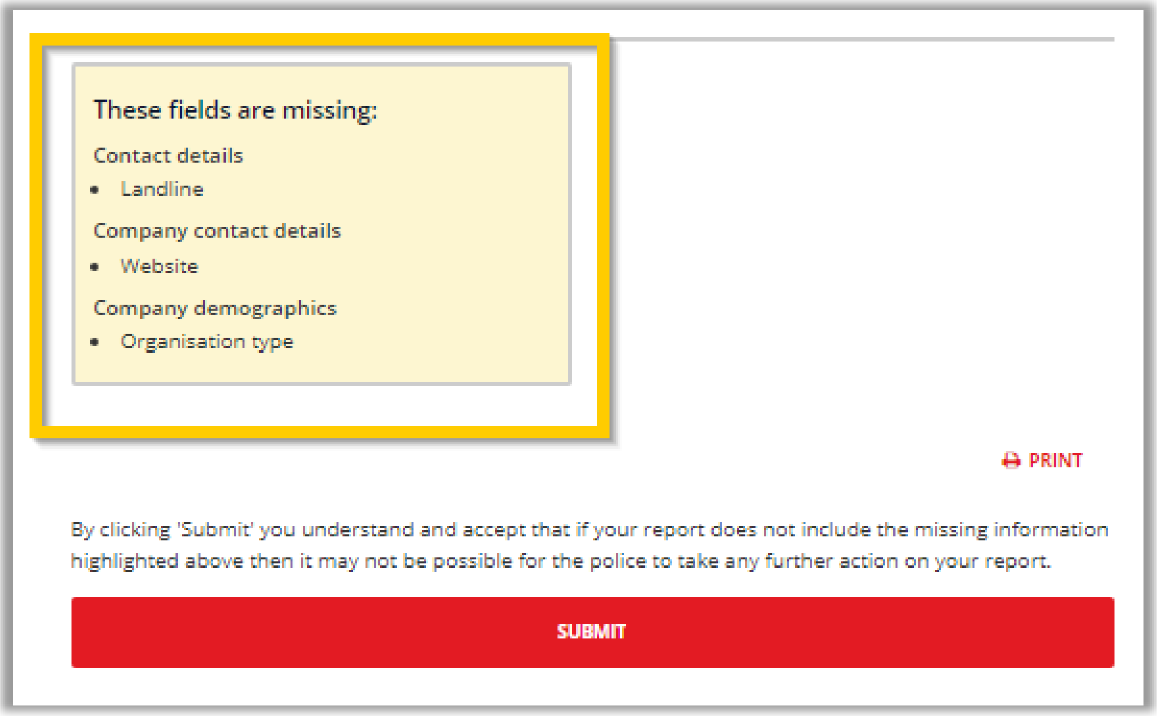


5.1 Important Fields

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.

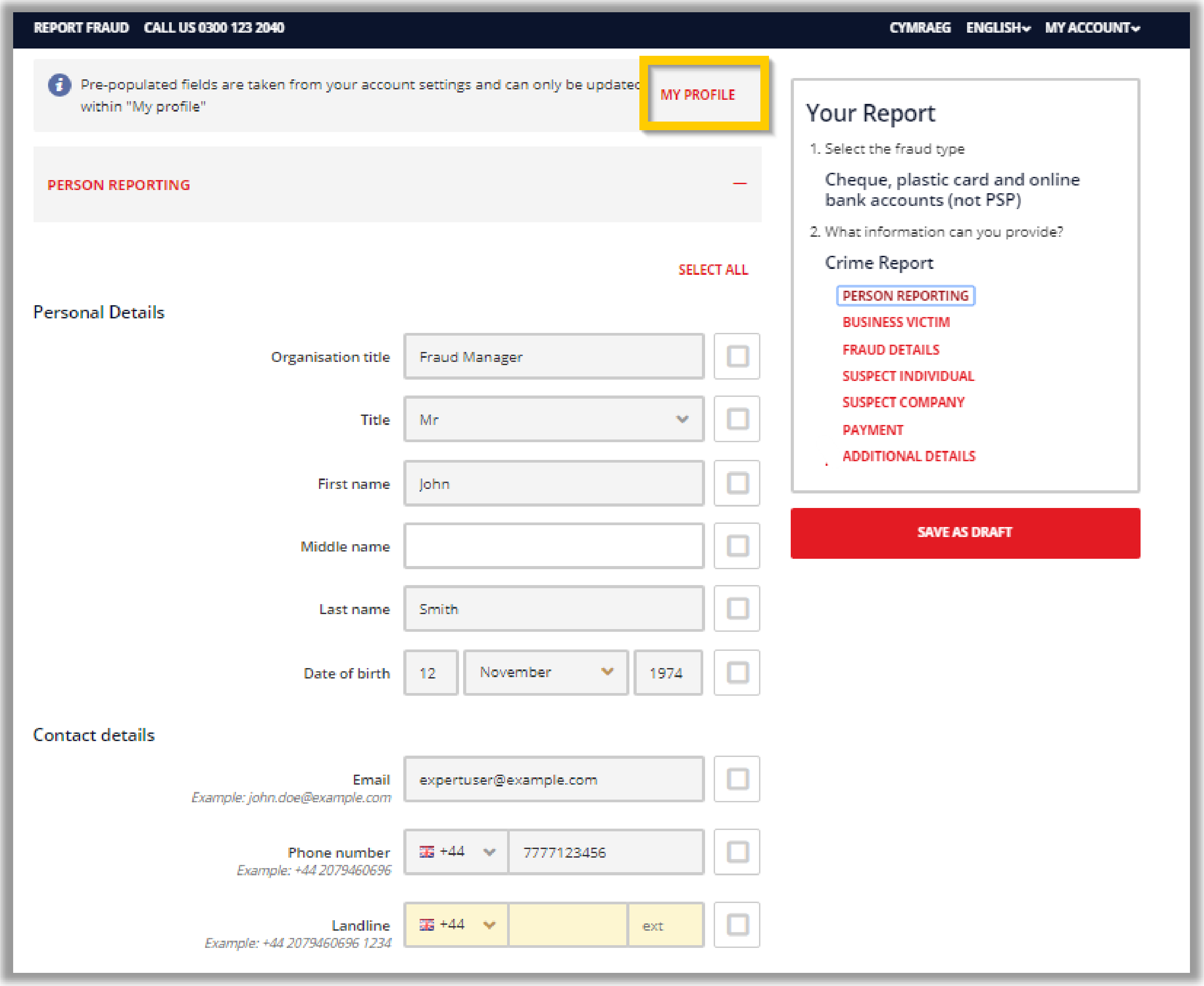


Whilst important, these fields are not mandatory. If the information is not available, you can still submit the report.

5.2 Person Reporting

This section will be pre-populated with the data from your dashboard profile.

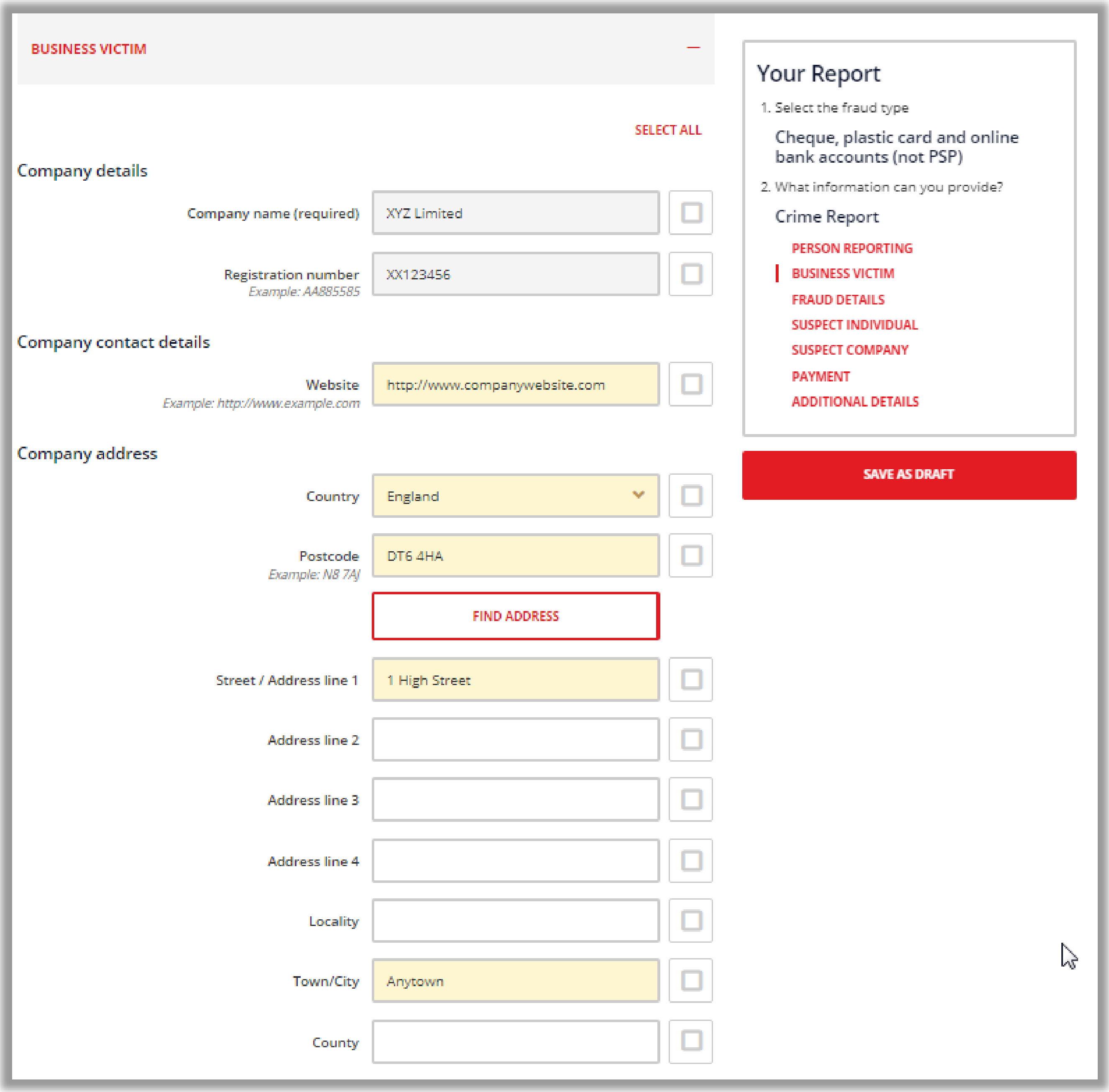
If you need to change any of the pre-filled information, navigate to the dashboard profile section by clicking the **'MY PROFILE'** link.



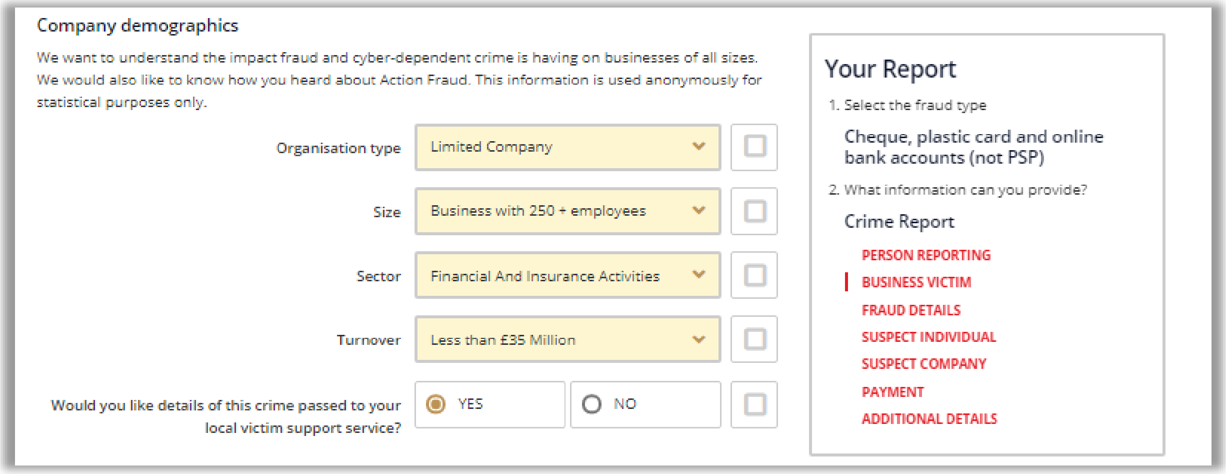
5.3 Business Victim

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

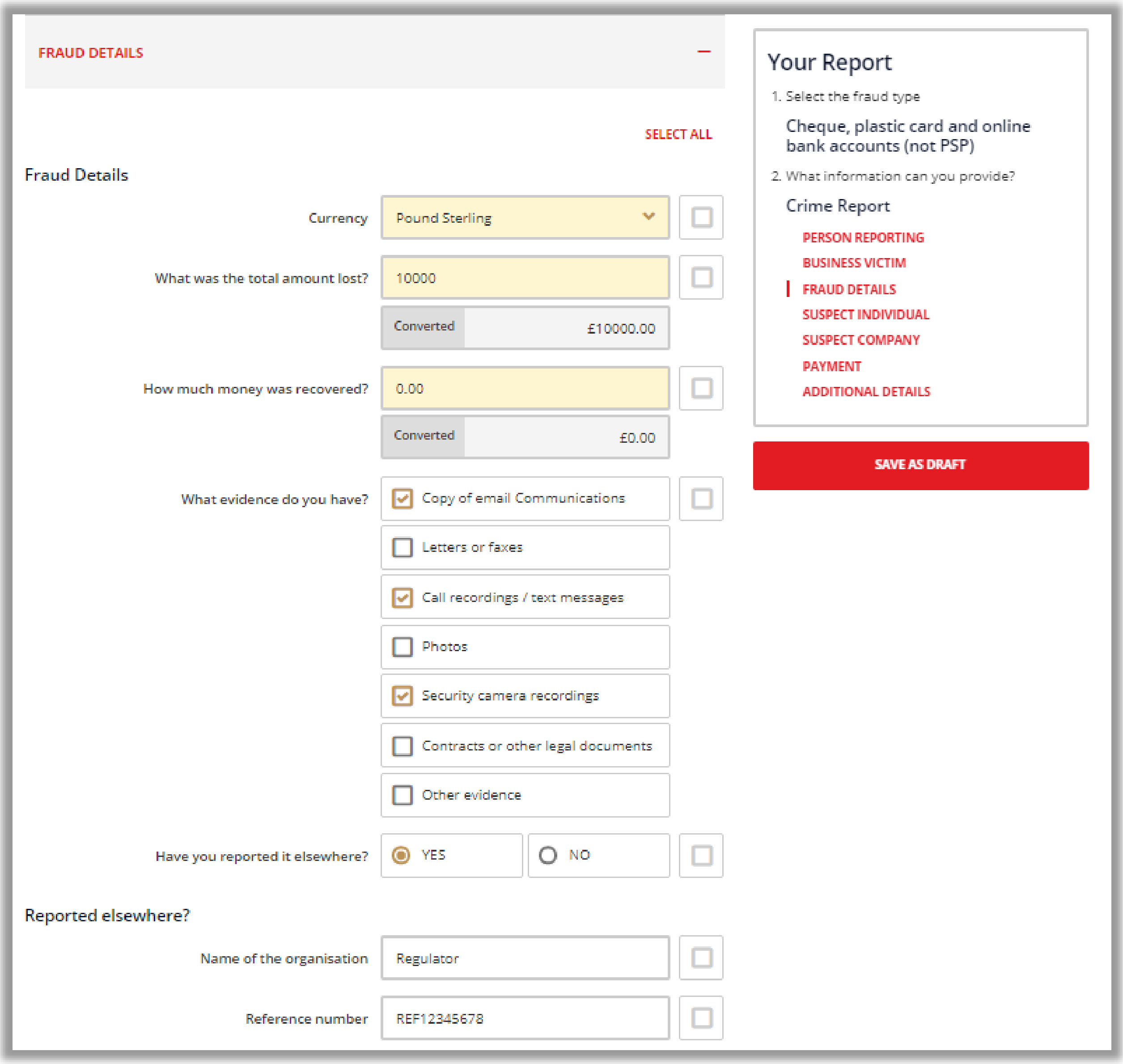


5.4 Fraud Details

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.

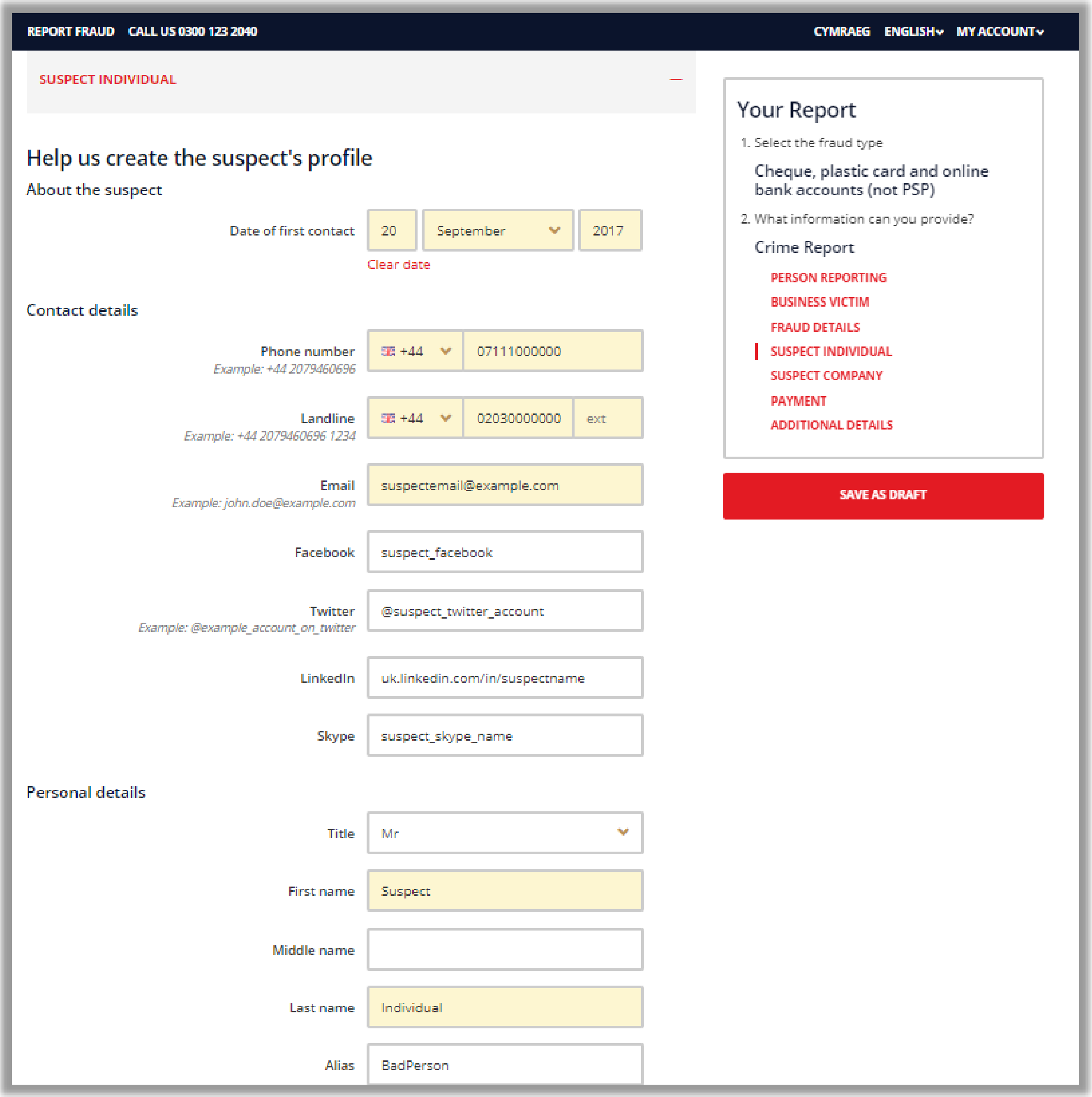
Depending on the crime type, there may also be additional questions relating to the specific crime type selected.

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



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)

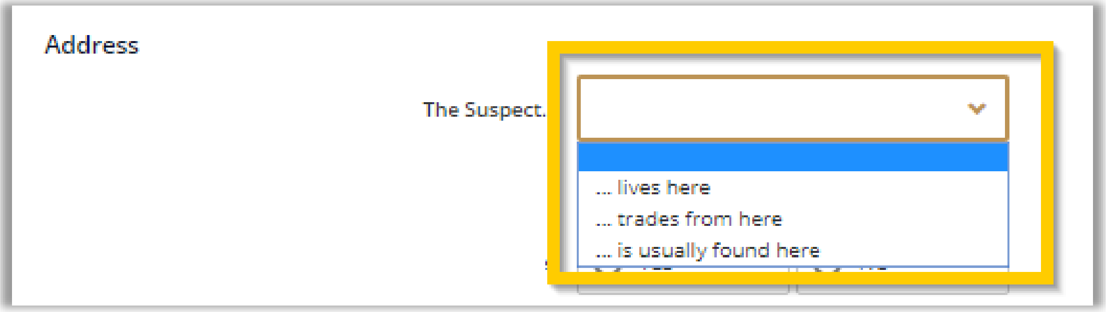
2. What information can you provide?

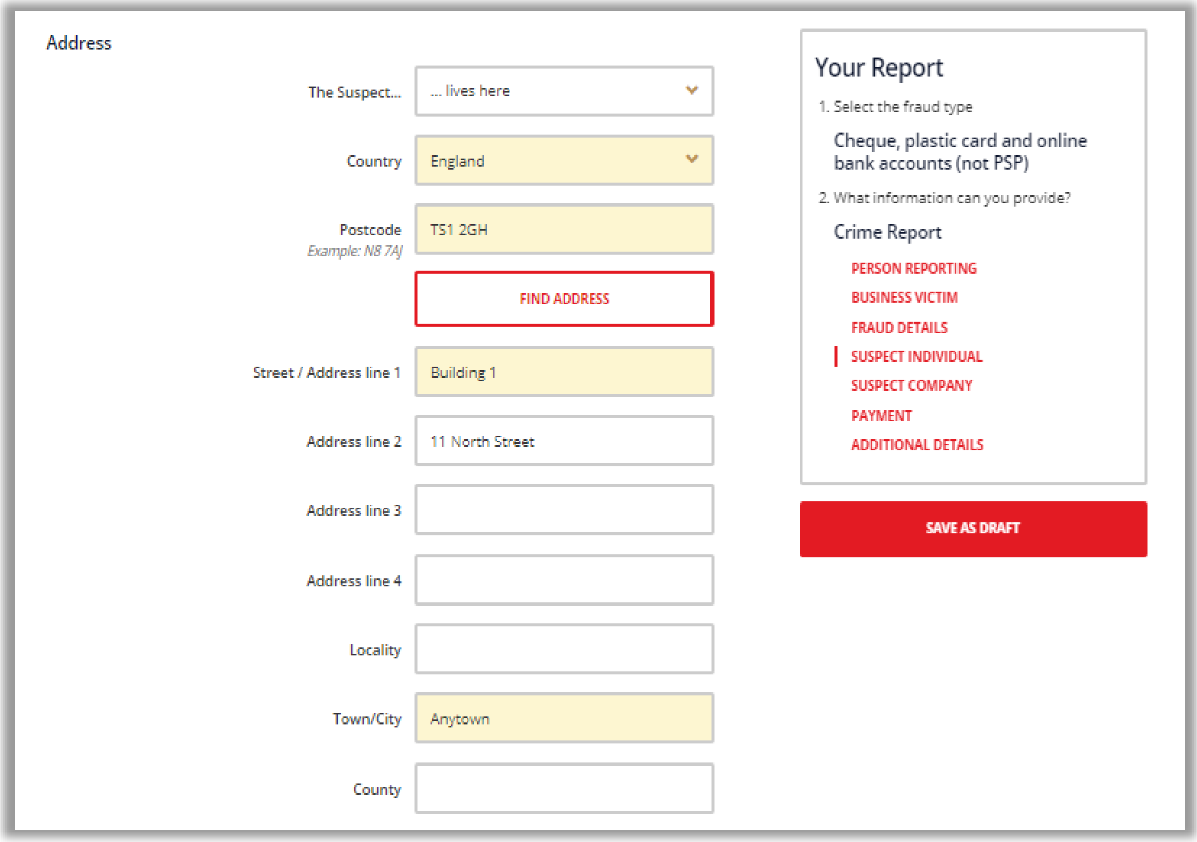
Crime Report

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

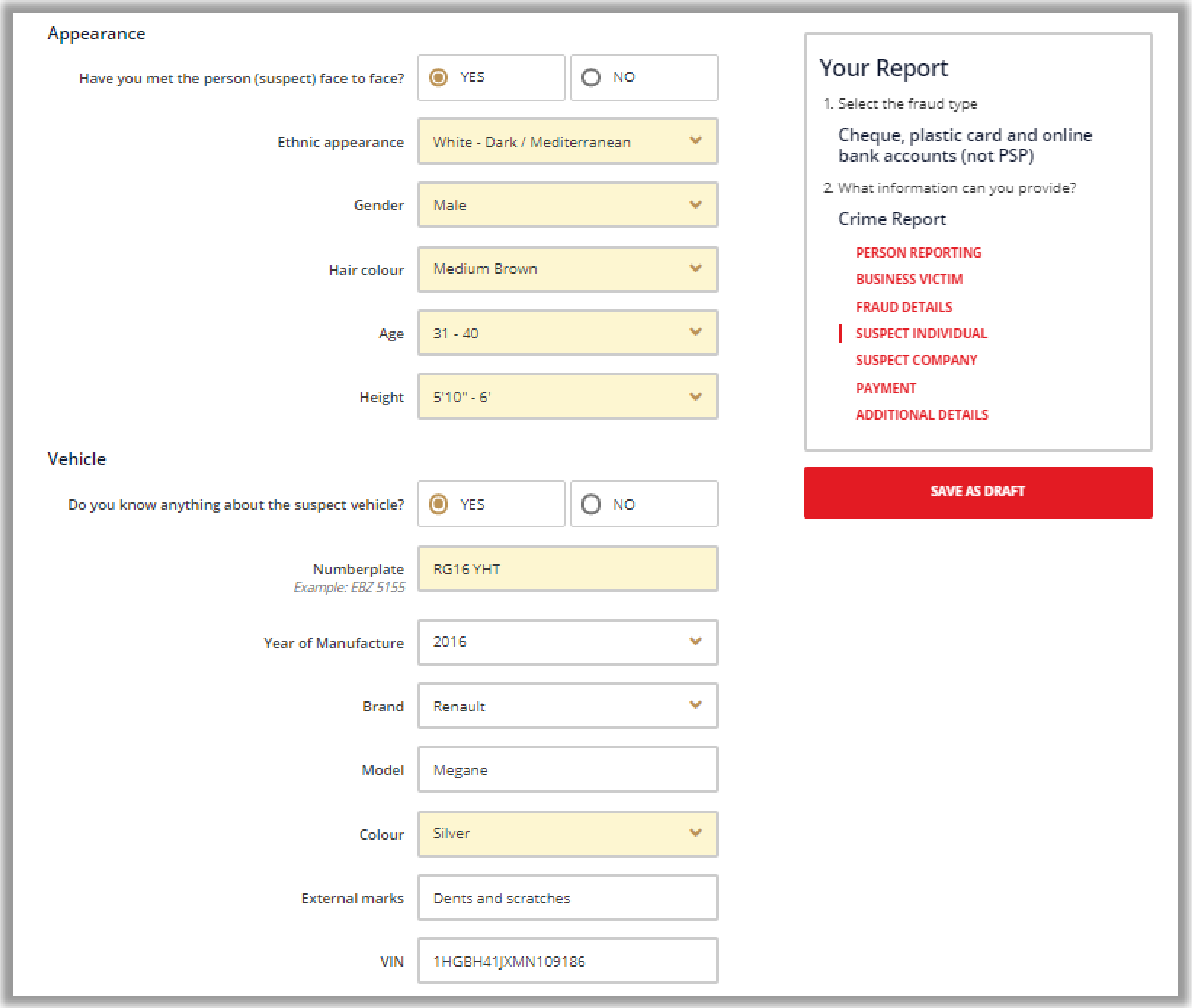
SAVE AS DRAFT

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



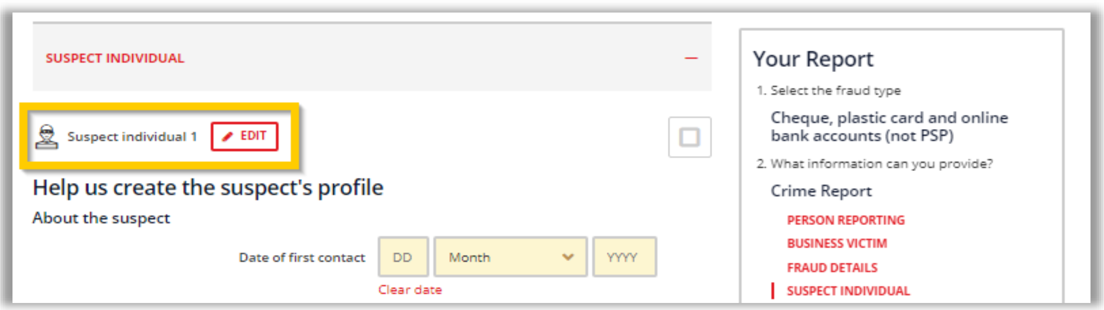


Enter any details about the suspect appearance and vehicle, if known



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

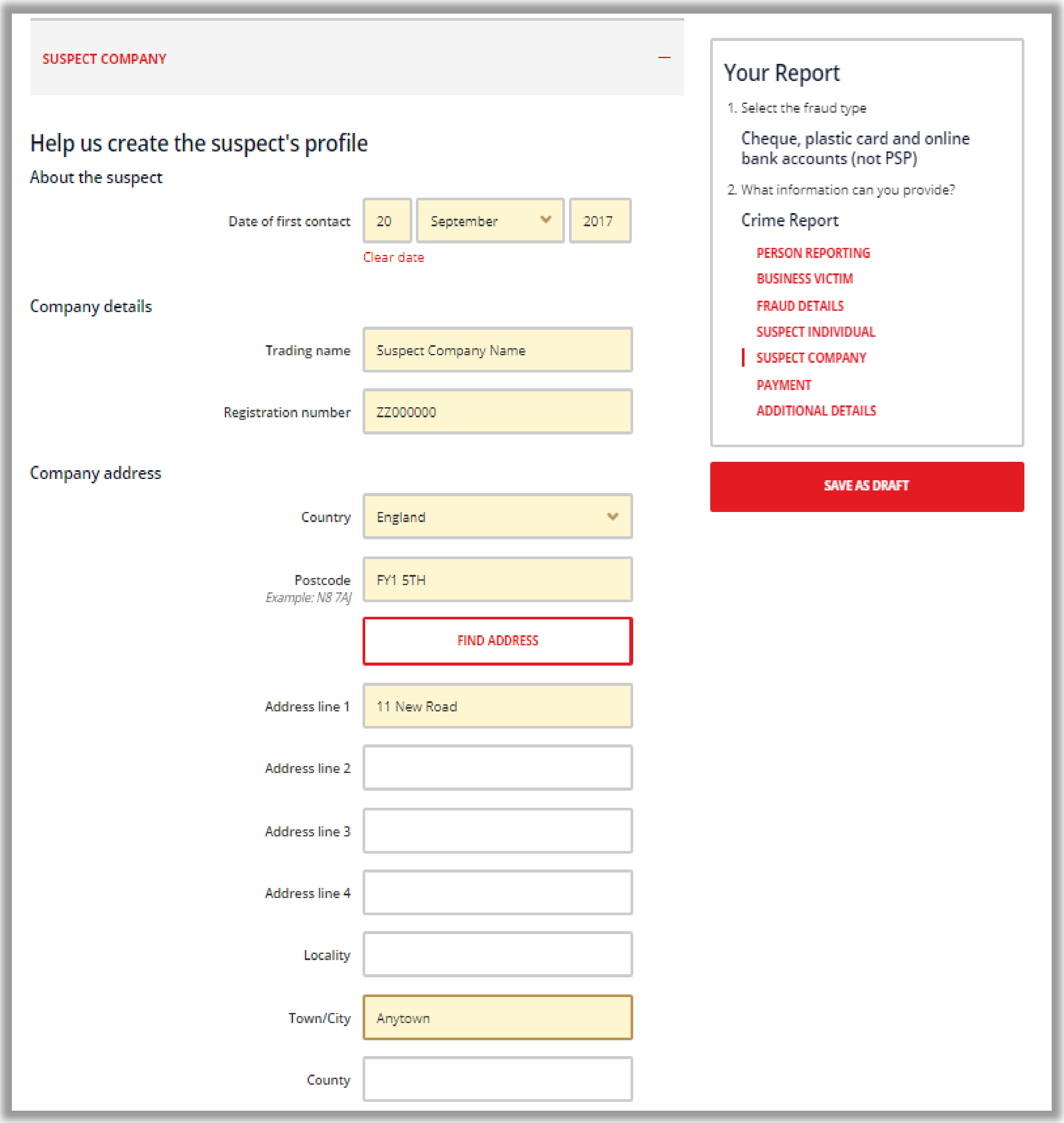
To change or add any information, click **EDIT**



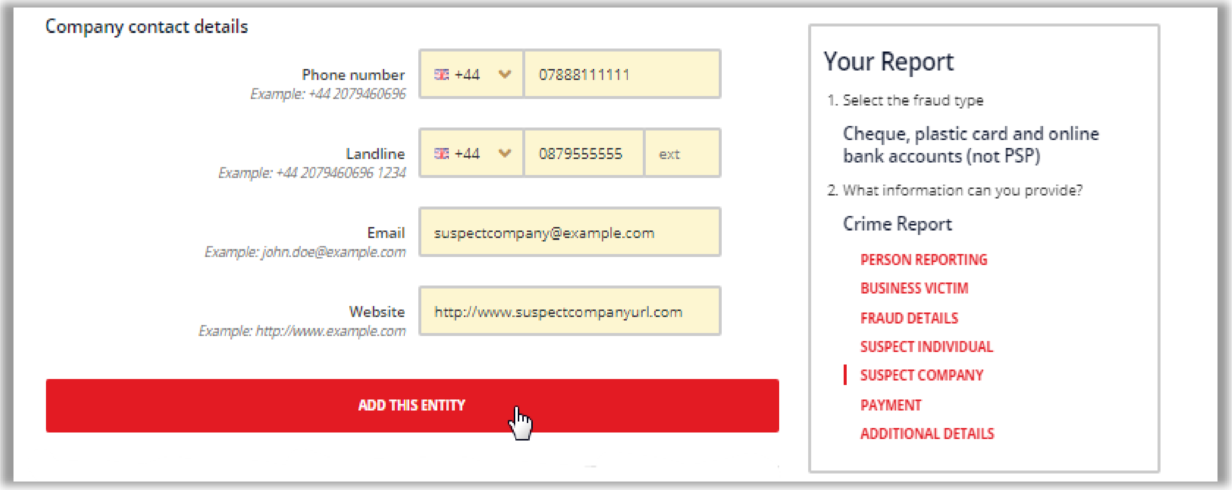
To add another suspect, repeat the previous steps. There is no limit to the number of suspects that can be added.

5.6 Suspect – Company

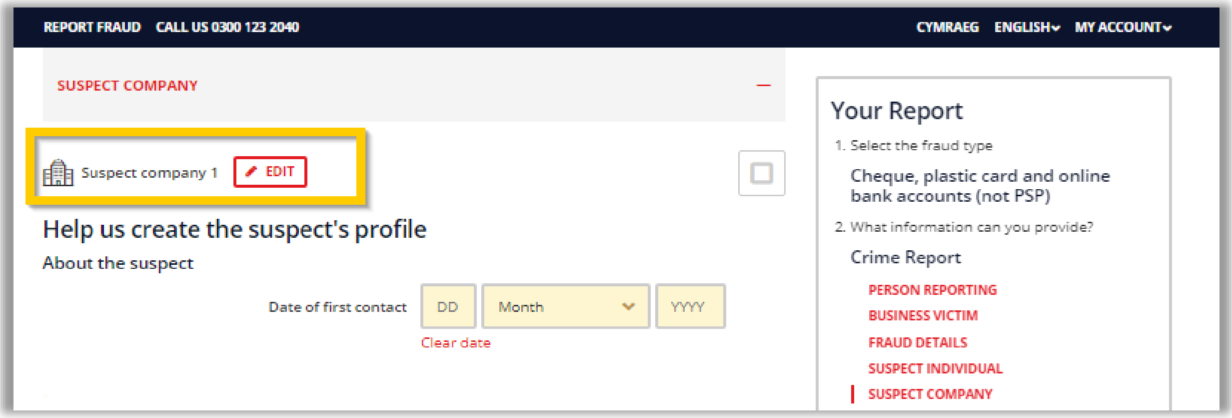
Enter details about a suspect company in this section



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



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

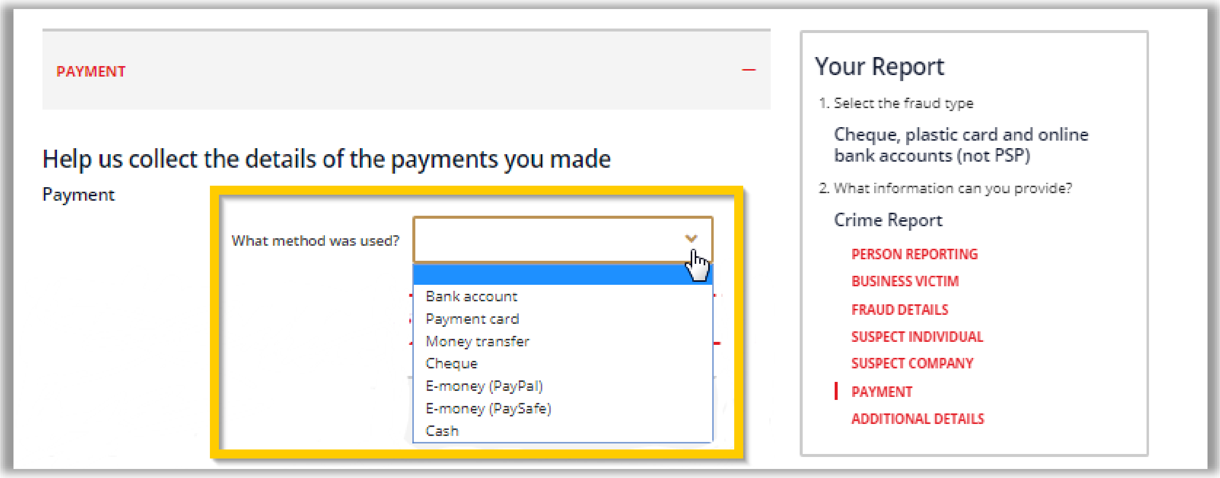


To add another suspect company, repeat the previous steps. There is no limit to the number of suspects that can be added.

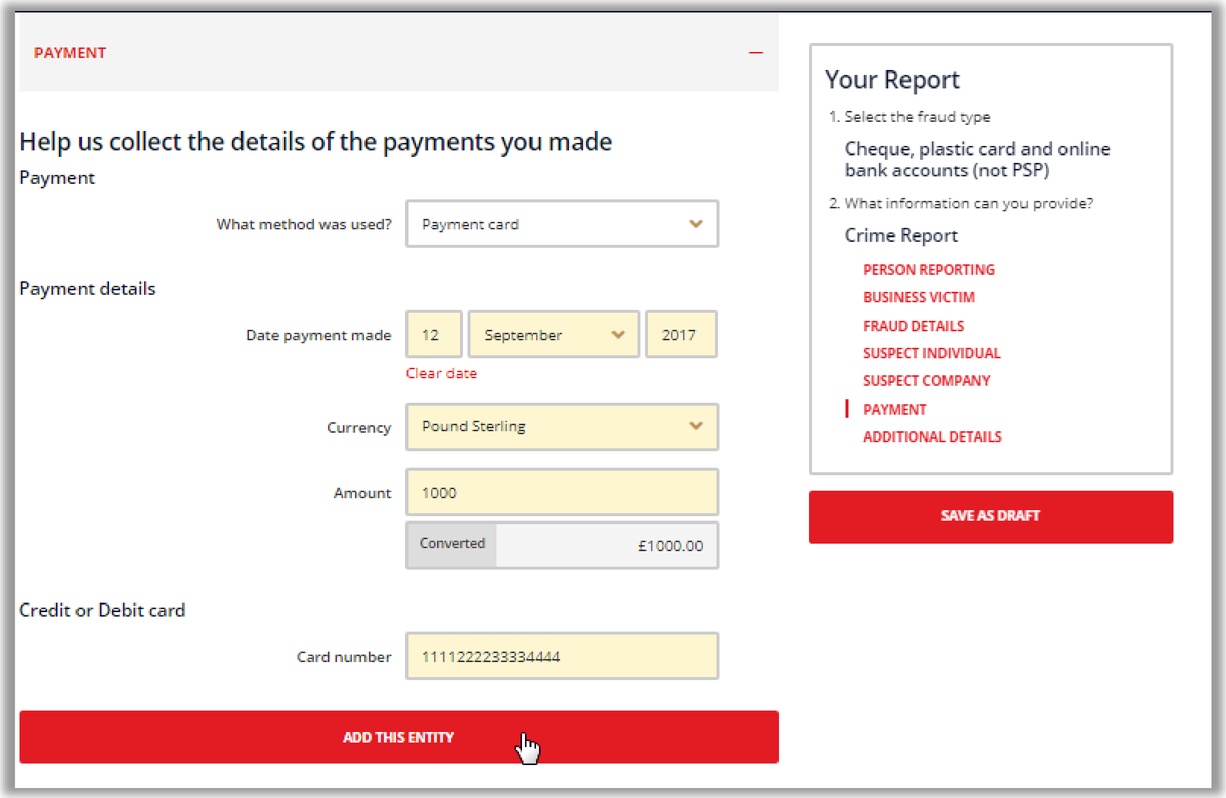
5.7 Payments

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

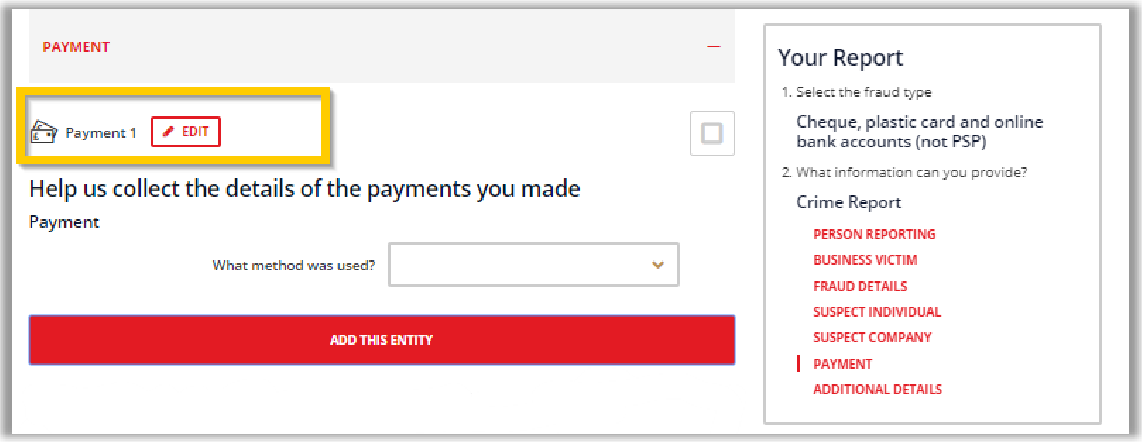


Once the method of payment has been selected, the relevant fields for that method will display. The screenshot below shows the fields that will display when ‘Payment card’ is selected.



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

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

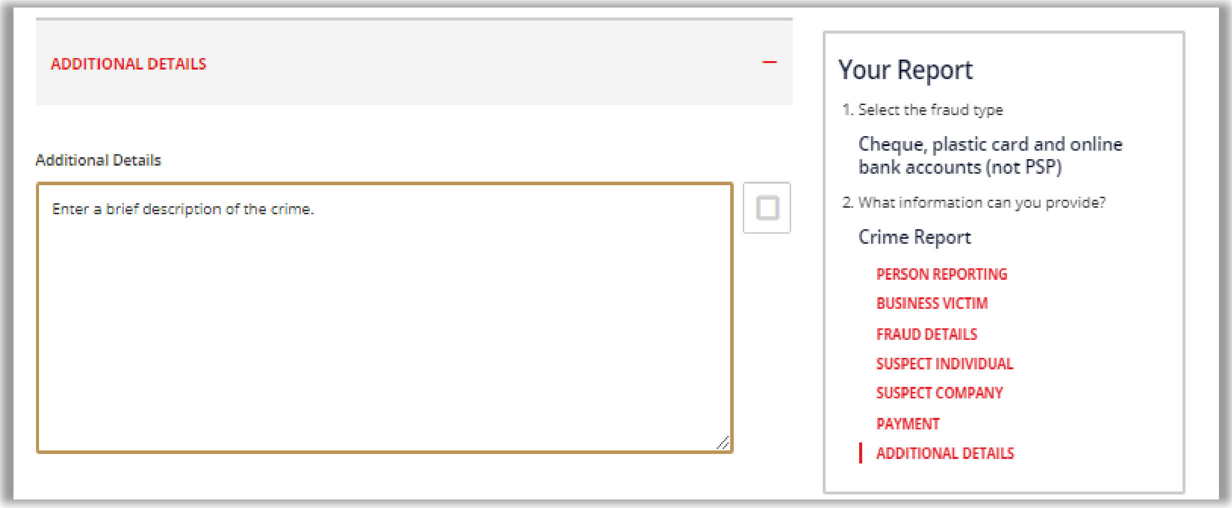


To add another payment, repeat the previous steps. There is no limit to the number of payments that can be added.

5.8 Additional Details

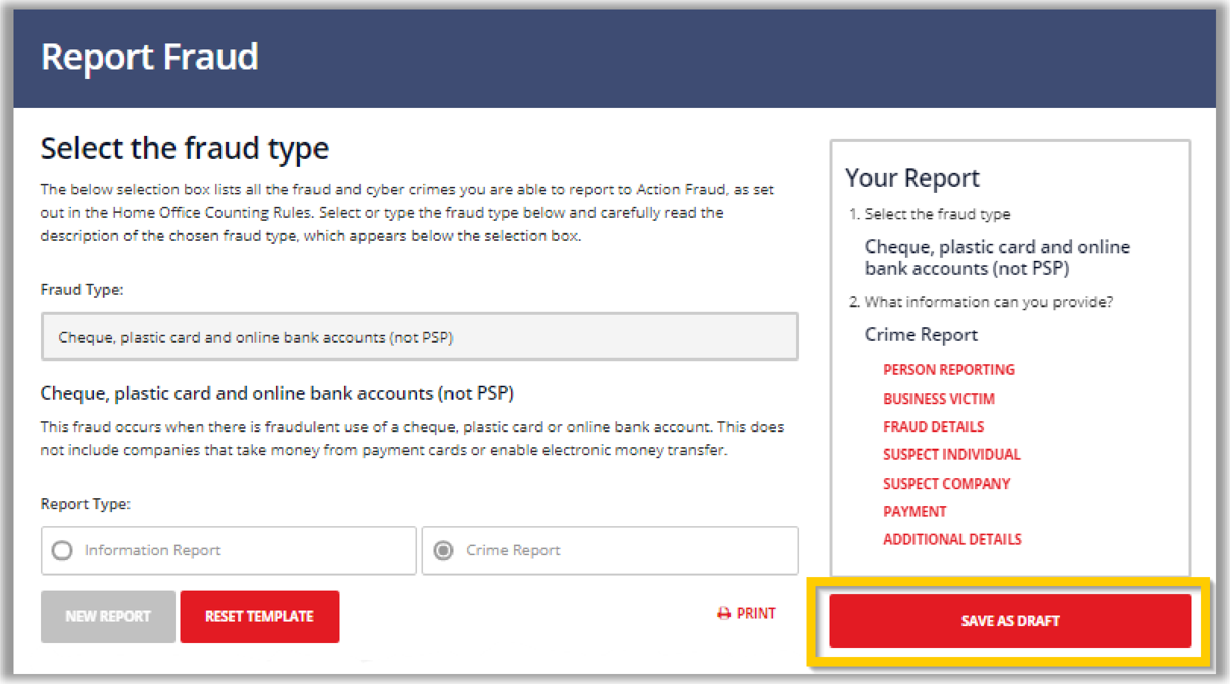
Enter a brief summary to describe what happened.

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’**

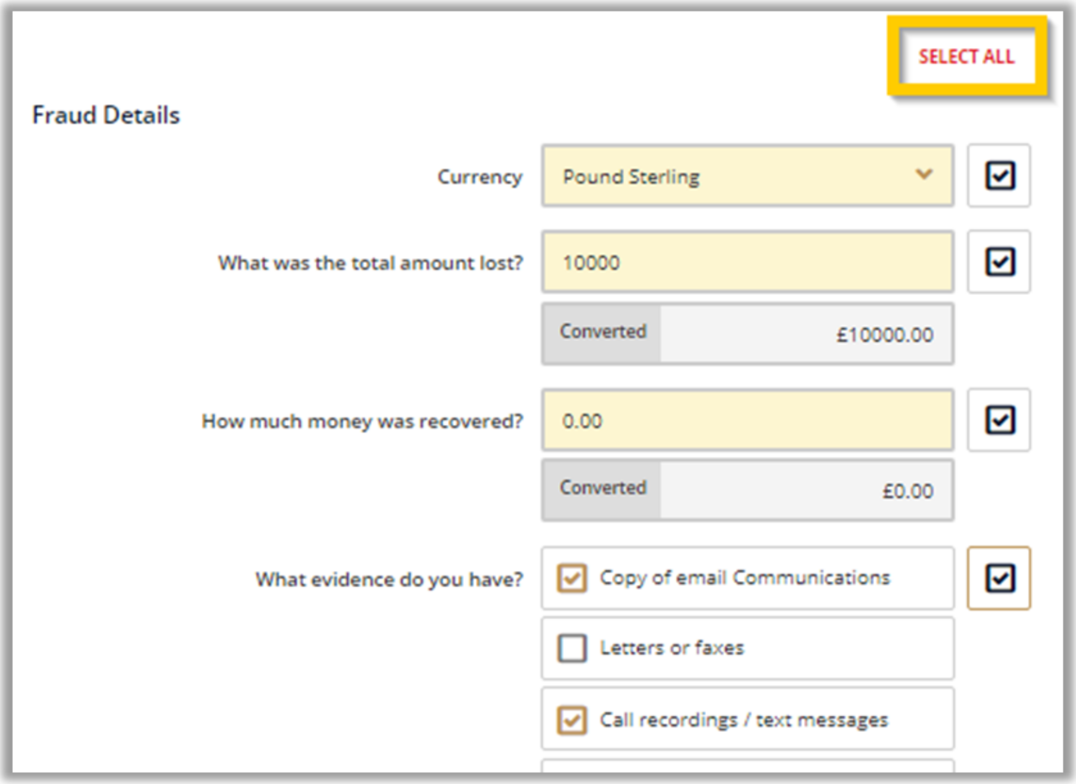


Once a report has been saved as a draft, it can be accessed from the Action Fraud dashboard. See **Section 9:** View/Edit Reports

(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

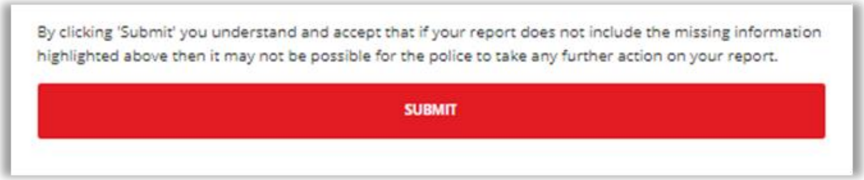


To copy a suspect or a payment, select the checkbox:

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

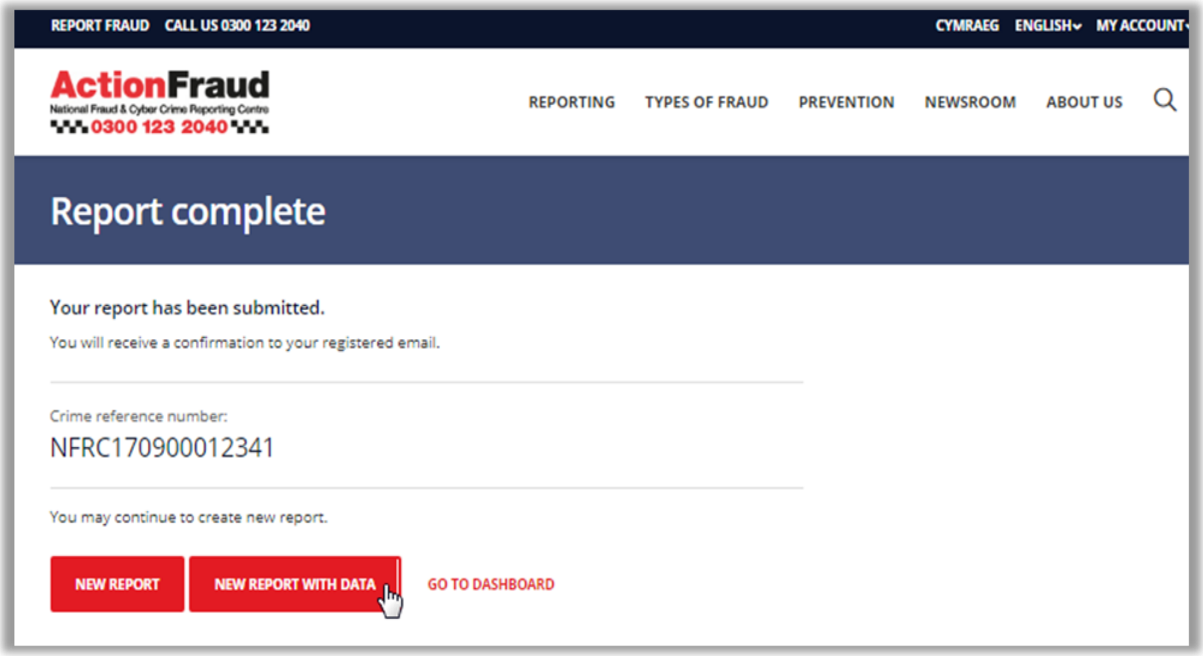
(viii) Submit Report

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



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

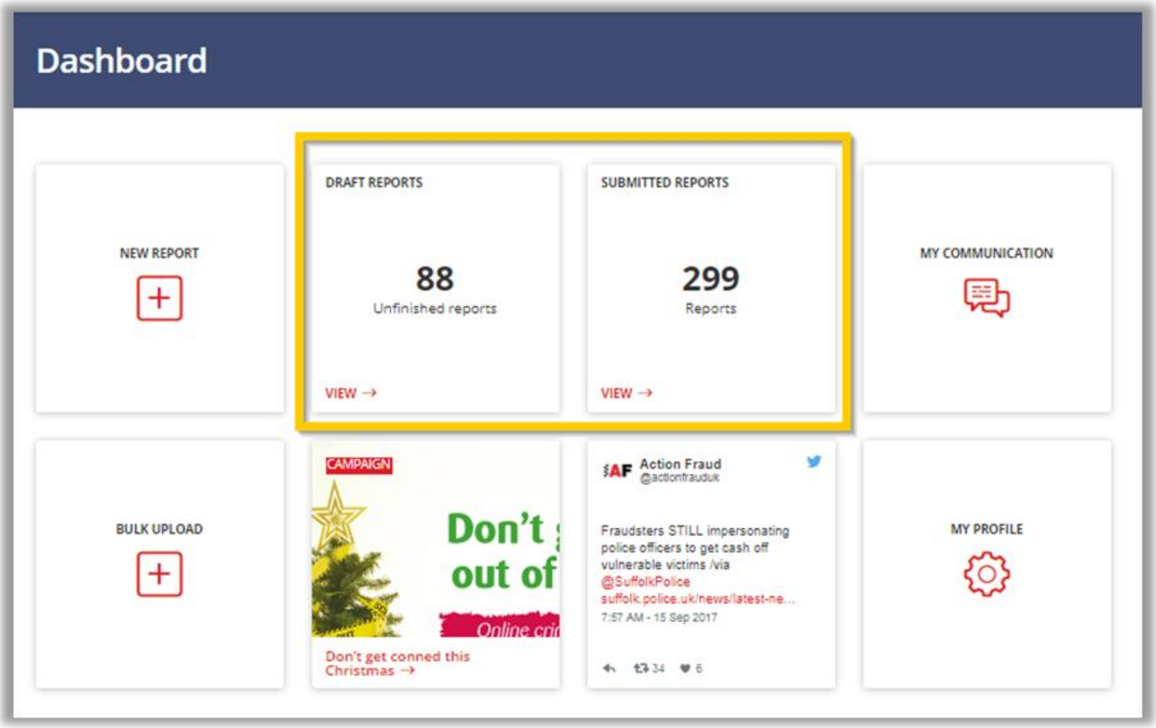
You will also receive a confirmation of the report to your registered email.



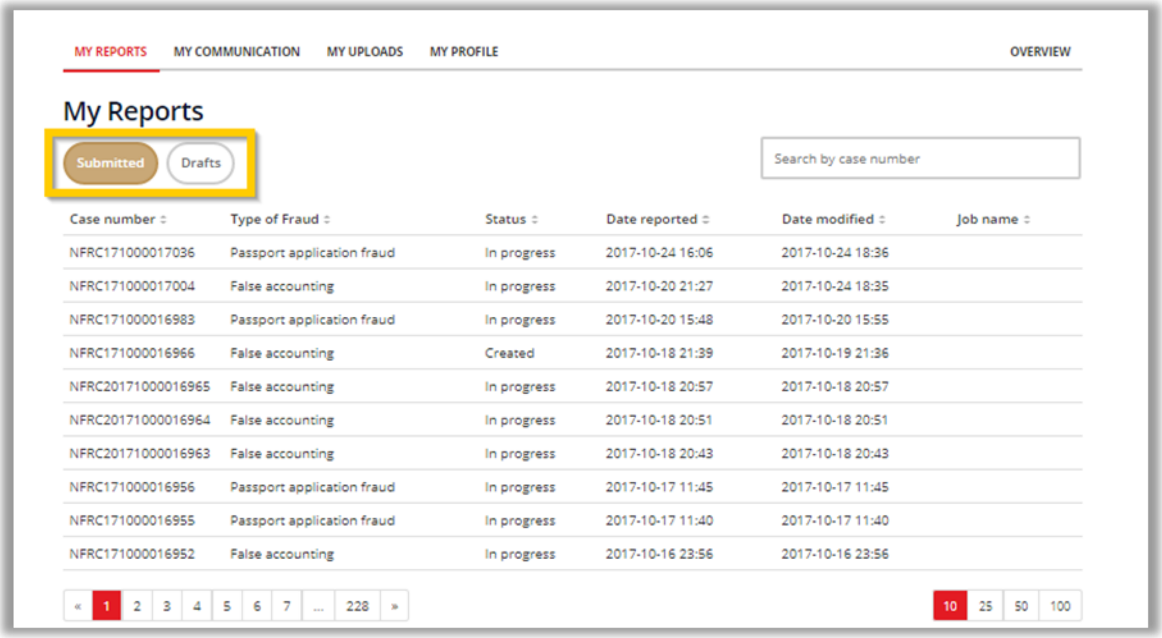
If you have selected data that you want to copy to the next report, click **NEW REPORT WITH DATA**

(ix) View/Edit Reports

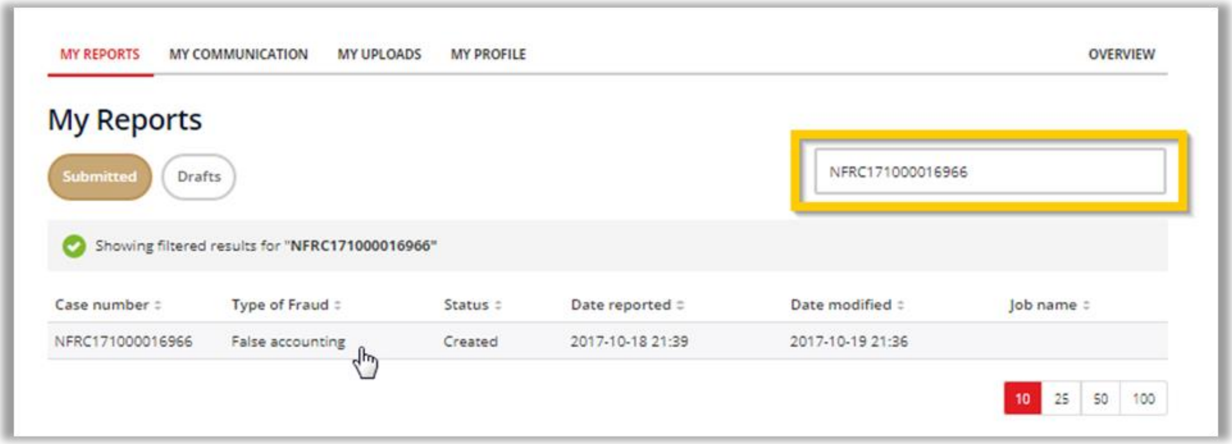
All draft and submitted reports are available to view and edit from the Action Fraud Dashboard.



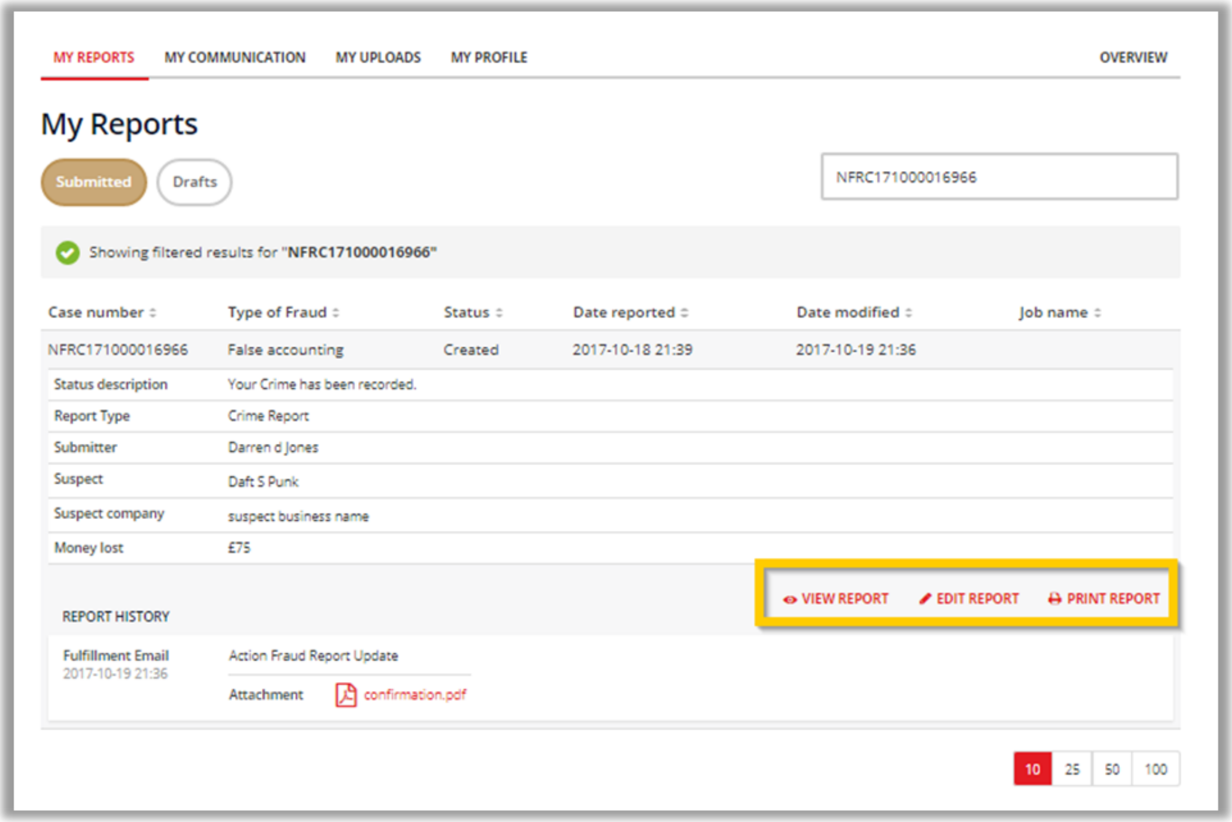
Selecting either the **DRAFT** or **SUBMITTED** reports tile will open the list of reports. Use the buttons at the top to toggle between the list of draft or submitted reports.



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



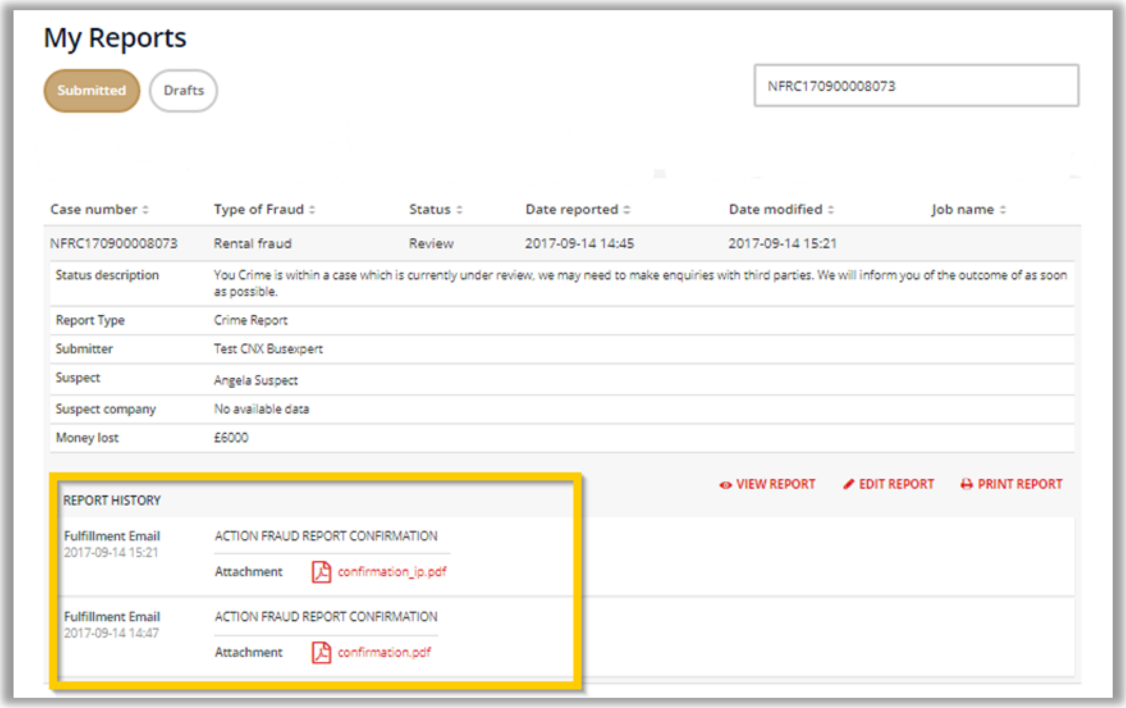
This will expand to display a general overview of the report details. To view, edit or print the report, click the relevant button on this screen



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



APPENDIX E – 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 do 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).
- 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".
- 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

In one extreme case we have a member who decided to transfer his deferred pension benefits from a Defined Benefit arrangement into a SIPP back in 2012, which was invested in care homes. He was offered a loan from the policy when he first transferred his benefits and was told “off the record” that he would not need to repay this. Subsequently he has now been approached by the SIPP provider to say that the company investing in the care homes has now gone into voluntary liquidation and he has nothing left in his pot.

(With thanks to the Union of Shop Distributive & Allied Workers (USDAW))

Case Study 5

The case below is an example of the persistent tactics that can be used to attempt to transfer a member's pension fund. The case study is real but information about the pension provider, customer name, receiving scheme, and scheme administrator have been anonymised to protect identities.
NB: This transfer request was assessed prior to the knowledge gained from the Hughes v Royal London High Court judgment and just prior to the HMRC facility of checking scheme registration.

- The transferring scheme was a personal pension plan.
- The value of the plan was in excess of £75,000.
- The member, Mr L, was over 50 but not at minimum retirement age and he worked for a limited company.
- The proposed transfer was to an occupational pension scheme.
- The receiving scheme administrator confirmed the receiving scheme was recently registered with HMRC.
- The member's employer had no connection with the receiving scheme. The sponsoring employer had been active for less than a year prior to the transfer request being received.
- The sponsoring employer was geographically distant from the member and his employer.
- The member confirmed he did not want to take regulated financial advice before opting to transfer to the receiving scheme.
- The transfer request was received via the scheme administrators.
- The receiving scheme was already flagged as having concerns (in that another member who had requested to transfer said they had been told by the trustees of the receiving scheme that they could access their pension benefits prior to the age of 55).
- The member confirmed he was employed, that his current pension arrangements had no connection to his employer and that he was aware he could not take benefits after transferring before the age of 55. The member confirmed he had fully discussed the decision to transfer with the receiving scheme's consultant.
- The fees charged by the receiving scheme included a fee on the transferred value along with a set up administration fee. Every contribution paid to the scheme was subject to the same fees. These charges were higher than the member was paying.
- The transfer request was accompanied by a complete copy of the scheme's trust deeds and rules.

As part of the due diligence process, the documents were passed to a specialist team within the provider to review. Accordingly, concerns were highlighted.

Key concerns

1. It was not clear why the member wanted to transfer into an occupational pension scheme run by a sponsoring employer whom the member had no connection to; this suggested there was possibly no statutory right to transfer (*it is now accepted that this position has been clarified following the Hughes v Royal London court ruling*).
2. The fees of the receiving scheme appeared high.
3. Intelligence gathered from a previous request to transfer to this scheme reveals potential concerns of scam activity.
4. The member had confirmed he had not sought regulated financial advice before deciding to transfer.
5. The investments of the receiving scheme were unclear.
6. The member was asked about his reasons for wanting to transfer but the answers he gave did not provide anything substantial to alleviate the concerns.

Decision

In view of the concerns of a potential scam, the provider decided not to proceed with the transfer and confirmed this decision to the member explaining their concerns.

The member subsequently raised a complaint with the provider in which he demanded immediate compliance with his request to transfer. A strong challenge was also received from solicitors acting for the receiving scheme in which they outlined why the transfer should go ahead. During the due diligence process, it became possible to contact HMRC to request a check on the scheme registration. The response from HMRC reassured the provider the decision to decline was correct as HMRC were unable to provide confirmation about the receiving scheme's registration status.

In the months that followed, Mr L submitted a second transfer request to another occupational scheme. This scheme purported to use a leading pension provider for investment management (after contacting the pension provider directly, this information was proved to be false). Due diligence checks on this scheme identified similar concerns and subsequent HMRC confirmation revealed this scheme was not registered. Following detailed due diligence checks, the transfer request was also declined.
In the time since these decisions were made, information has come to light that both schemes the member wanted to transfer to were part of an umbrella scheme, which has now been identified as being part of a significant pension scam.

This case study highlights that, despite rigorous challenges from the member, and legal representatives of the receiving scheme, the due diligence checks revealed concerns that ultimately safeguarded the member's pension fund.

Case Study 6

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 a 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 7

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 a 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.