ASSOCIATION OF CONSULTING ACTUARIES

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Kirsty Knight
Department for Work and Pensions
Policy Group
Private Pensions and ALB Partnerships
Zone A, Third Floor South,
Quarry House,
Leeds LS2 7UA

Dear Kirsty

SIPPs and SSASs - supplemental ACA Response to Consultation on The Occupational and Personal Pension Schemes (Conditions for Transfer) Regulations 2021

I am writing on behalf of the **Association of Consulting Actuaries** in response to the consultation on the above regulations. We provided a response on 9 June 2021 which provided our overall response to the regulations covering mainstream pension schemes and this supplemental letter in no way conflicts with what we say there.

On further reflection, and we apologise for the late submission of these further points, we now raise the particular position of transfers into SIPPS and SSAS, where our specialised Committee covering this area has further reflected and feels there is a need to make representations to treat these schemes separately as they have very different needs and circumstances to mainstream schemes.

In short, we have considerable concerns about the restrictive implications of the proposed regulations in the way they would impact on SIPPS and SSASs which could significantly limit the freedom to manage pension accumulations for the best interest of scheme members.

We would make the general comment that if transfers are made to a scheme with an Independent, professional trustee or provider and transfers are made on the recommendation of a qualified professional, then most of the dangers arising out of scams should disappear.

We would contend that SIPPS with regulated providers and SSASs, with independent professional trustees whose approval would be needed for any transfer, reduces the risks very considerably and **justify our contention that such schemes should be excluded from the regulations and be dealt with in a different way**.

Our further thoughts are set out in the **Appendix** to this letter.

We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful. In that event, please contact me on 01722 443613 or at david.downie@embarkactuarial.co.uk

Yours faithfully

David Downie
Chairman, Individual Savings and Pensions Committee
On behalf of the Association of Consulting Actuaries Limited

APPENDIX

SIPPs and SSASs - supplemental ACA Response to Consultation on The Occupational and Personal Pension Schemes (Conditions for Transfer) Regulations 2021

In response to the specific questions:

Q1. Please provide details of any additional types of receiving scheme to which transfers should proceed without additional checks, including how they can be identified for the purposes of the regulations.

The regulations as currently drafted will be prejudicial in many cases where receiving SIPPs and SSAS for a transfer are totally legitimate and well-run schemes. The regulations will impede members freedom of choice and their ability to consolidate pension benefits into a manageable format, which we understand to be Government policy. Further, SIPPs which have regulated providers and are subject to FCA control do not pose substantial risks for transfers. In addition, SSASs with professionally regulated trustees also pose little risk as unanimous consent of all trustees is required for decision making. We believe that there is increased danger where transfers are made to SSASs who do not have an experienced and qualified professional trustee (which, we believe, they should be required to have).

We would contend that SIPPS with regulated providers and SSASs, with independent professional trustees whose approval would be needed for any transfer, reduces the risks very considerably and **justify our contention that such schemes should be excluded from the regulations and be dealt with in a different way**.

Q2. To what extent is the evidence requirement set out in the regulations to demonstrate an 'employment link' sufficient and how could it be strengthened?

There are members of pension schemes who no longer have an employment link with the employer that contributed to the scheme. Alternatively other pension schemes - particularly SSASs - accommodate an affinity group including but not limited to the employees and office holders of the participating employer. For good reason, a child may wish to participate in a parent's pension scheme so as to enjoy any pooling of investments, notwithstanding that the child does not work for the family business. Similarly, SSASs established for an initial group of company officers may wish to devolve into more than one scheme where the interest of those involved diverge in later life. The draft regulations would impede such divergence. Finally, the requirement to contribute is inappropriate for people who have some form of HMRC protection against the Standard Lifetime Allowance. Insisting on the employment link reduces choice and pension freedom and could be detrimental to better pension savings. Again, the presence of a professional independent trustee and possibly advice on the transfer would eliminate most scans.

Q3. How could the evidence requirement for 'residency link' work in practice?

If a member of a pension scheme moves abroad then their needs in retirement will depend on the currency and conditions in the new territory of residence. In many territories there is no established pensions regime and in such circumstances every individual will need to establish where the most favourable territory is to house their pension savings. It is not always the case that the UK is the optimum such territory. Therefore, a residency link is not always appropriate, but we do believe that such transfers need to be advised by a competent professional advisor.

Q4. How should the 'red flags' as set out in the regulations work in practice?

We believe that the list of ball points in Section 45 is both problematic and if maintained will harm the interests of prospective pensioners. As a simple example, most British pension funds include overseas investments as part of their portfolios and there is no reason to limit the inclusion of such funds. Individuals should be free to choose their own advisors. To debar overseas investments etc per se is against pensioners interests and conflicts with, for example, the FCA's definition of "Standard Assets for SIPPS".

The regulations should also take account of the nature of the individuals whose pension schemes are being transferred. For example, there is no reason to deny freedoms to an "experienced investor" – and less experienced investors would in most circumstances be denied access to more specialised investments.

Q5. How should the 'amber flags' as set out in the regulations work in practice?

These regulations in some circumstances will potentially empower pension providers, trustees or scheme administrators who have been ineffective, inadequate - or worse - to retain business against the wishes of the underlying pension member. Secondly, as a result of Finance Act 2004, SSASs are allowed to make loans to participating employers. These have to adhere to HMRC conditions but are technically unregulated. Similarly, commercial property is also an unregulated investment but is a legitimate investment choice which can help diversify a particular investment portfolio. In summary, these rules may empower poor performing ceding trustees and lead to unsatisfactory outcomes for pension members.

Q6. Do you have any views on how the requirement to take guidance can work in practice when the pension saver has already taken financial advice?

We believe that an ideal scenario will ensure that:

(i) all transfers are subject to advice from a qualified person, and that
(ii) the receiving pension scheme has either a regulated provider (as in the case of SIPPs) or is a scheme such as a SSAS with an experienced independent professional trustee.

The former "pensioneer trustee regime" for SSASs did so much, over many years, to avoid problems such as "scams". We believe that there is a considerable case for its reintroduction. Most of the problems currently causing concern would have been avoided if there was a pensioneer trustee or similar.

Q7. Annex 3 sets out the proposed list of standard questions that trustees and schemes managers should use to help determine the presence of red or amber flags. Do these questions provide a comprehensive list, which if any questions are not needed and what other questions should be included?

As will be apparent, we have concerns as to the ability of trustees and managers to assess the criteria. We believe that the solution is:

a) to promote qualified advice on transfer and

b) the experience of an independent and professional trustee in the receiving scheme. This would certainly apply to transfers to SIPPS and SSASs with an experienced trustee. Again, we would suggest that consideration be given to reinstating a similar role to that of the old Pensioneer Trustee.

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