

## Ombudsman's Determination

Applicant	Mr W
Scheme	Western Power Distribution Pension Fund ( <b>the Fund</b> )
Respondent	The Western Power Pension Trustee Limited ( <b>the Trustee</b> )

### Complaint Summary

1. Mr W has complained that the Trustee has not correctly interpreted the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (**the Transfer Regulations**) and that his transfer request has been unnecessarily delayed as it required him to seek a MoneyHelper safeguarding appointment. As a result, Mr W requests that he is financially compensated for the fall in his transfer value, and a payment made in recognition of the stress and inconvenience that he has suffered.

### Summary of the Ombudsman's Determination and reasons

2. The complaint shall not be upheld against the Trustee because it did not act unreasonably in determining that an amber flag was present in Mr W's transfer request and referring him to MoneyHelper for a safeguarding appointment.

### Background Information

#### *Before Mr W's Transfer*

3. By way of context, Mr W's request to transfer from the Fund was received by the Trustee on 21 February 2022 – and so the process came under the Transfer Regulations.
4. The Transfer Regulations (see Appendix) came into force on 30 November 2021. This legislation was introduced further to a consultation exercise – “Pension Scams: Empowering Trustees & Protecting Members” – launched by the Department for Work & Pensions (**DWP**) in May 2021.
5. As detailed in DWP's consultation outcome “Government response: The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations

2021”<sup>1</sup>, updated on 8 November 2021 (the **DWP Consultation Outcome**), the Transfer Regulations were intended to protect savers against pension scams when making a transfer from one pension scheme to another. The DWP Consultation Outcome explains that the intentions of the Transfer Regulations were to “build a strong first line of defence in the fight against pension fraud, providing trustees and scheme managers with tools to intervene when concerns about a transfer arise”, but also “to ensure that transfers, where trustees and scheme managers have no suspicions, can proceed without any additional processes”.

6. The Transfer Regulations only allow a transfer to proceed if one of two conditions are fulfilled. The first condition is met if the transfer is being made to certain types of schemes deemed to be “safe”. However, the second condition requires the trustee to identify if any “red” or “amber” flags are in evidence. The existence of a red flag would block the transfer, while an amber flag would result in the member having to seek specified guidance before the transfer can go ahead. The guidance must be obtained from MoneyHelper through a free ‘Pension Safeguarding Guidance’ appointment.
7. From the outset, the approach of the pensions industry on how to implement the Transfer Regulations has been fragmented, with different views on how to apply them. This means that there has been little consistency in practice, with different approaches on the level of risk tolerated by trustees and scheme managers when applying the Transfer Regulations.
8. Legal commentary at the time included views that the legislation in respect of the “overseas investments” amber flag was broader than intended, as it included any overseas investments. Noting this divergence, some lawyers and trustees took the view that it would be prudent to take a cautious approach towards this flag, at least until the meaning of “overseas investments” had been tested or the scope of the regulation itself narrowed.
9. Likewise, the Joint Committee on Statutory Instruments also noted the issue in its Twenty Second Report of 2021-22 (printed on 26 January 2022)<sup>2</sup>:

“Regulation 9(5)(d) states that there is an amber flag present where the trustees or managers of the transferring scheme decide that there are overseas investments included in the receiving scheme. Given that most schemes include overseas investments, it appeared to the Committee that this may result in a very large number of pension savers being required to take scams specific guidance... the Department confirms that it is not the intention behind regulation 9(5)(d) to capture, as a scam risk indicator within the amber flag created, circumstances where there is in fact low risk of a scam. However, the Department explains that since these Regulations came into force, it has been made aware of a potential issue of too

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<sup>1</sup> <https://www.gov.uk/government/consultations/pension-scams-empowering-trustees-and-protecting-members/outcome/government-response-the-occupational-and-personal-pension-schemes-conditions-for-transfers-regulations-2021>

<sup>2</sup> <https://publications.parliament.uk/pa/jt5802/jtselect/jtstatin/151/report.html>

many pension transfers being caught by the amber flag in regulation 9(5)(d) and the Department is actively engaging with industry representatives to reach an understanding of the potential issue and the distinction between those overseas investments that present scam risk and those that do not.”

10. As a result, a number of schemes have identified an amber flag in most, if not all, cases where they consider an overseas investment is present, while others have taken an alternative approach where the level of perceived risk is low.

#### *After Mr W's Transfer*

11. In the period since Mr W's transfer there have been further attempts to clarify the meaning of the overseas investment amber flag but, in the absence of a change to the Transfer Regulations themselves, there remain different approaches to how it is operated in practice. For example, in its “Practitioner Guide (Interim) Version 3.0”<sup>3</sup> the Pension Scams Industry Group advises that it is unable “to issue definitive good practice at this time” in respect of the Transfer Regulations, commenting that “there are several different views on how to implement the Regulations.”
12. The Pensions Regulator (**TPR**)’s guidance for trustees on “Dealing with transfer requests”<sup>4</sup> (the **TPR Guidance**) has been updated since it was first issued on 8 November 2021. In respect of the “overseas investments” amber flag, this was updated on 5 July 2022 and now reads:

“The specific concern here is not whether the investment is in, for example, a global equity fund but whether the investment is in assets or funds where there is a lax, or non-existent, regulatory environment or in jurisdictions which allow opaque corporate structures. After carrying out due diligence you may consider the transfer is at a low risk of a scam and, where your scheme rules allow, you may consider granting a discretionary transfer.”

“Some overseas advisers recommend members invest their pension funds in an offshore investment bond in an international self-invested personal pension. The FCA has warned that this may expose members to high or unnecessary charges and has stated that the tax benefits of such arrangements are redundant for a member investing in a UK personal pension.”

13. A joint statement was also issued by the DWP and TPR on 5 July 2022 (the **Joint Statement**), which reflected that “concern has been expressed” about the application of two points in the Transfer Regulations, including the overseas investments amber flag. The last paragraph of the Joint Statement says:

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<sup>3</sup> Combating Pension Scams – A Practitioner Guide (Interim) Version 3.0 (Effective from 20<sup>th</sup> March 2023).

<sup>4</sup> <https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/administration-detailed-guidance/dealing-with-transfer-requests>

“As a reminder, trustees should take a risk-based approach to their decision-making. Where a transfer causes no concern, which should be the vast majority of cases, they should proceed with no further action required. Where trustees believe the regulations mean there is no statutory right to transfer but they have concluded following due diligence that the transfer is at low risk of a scam, trustees can grant a ‘discretionary transfer’ [that is, a non-statutory transfer] where scheme rules allow.”

## Material Facts

14. Mr W requested a transfer from the Fund to a UK registered pension scheme (the **Receiving Scheme**) on 21 February 2022. Mr W is represented by his financial adviser, Lynas Vokes Investments Limited (**Lynas Vokes**).
15. The Receiving Scheme is a personal pension plan administered by Investment Funds Direct Limited (FCA Registration Number 114432), which is wholly owned by M&G Investment Management Limited.
16. As part of its due diligence process, the Trustee requested further information from Mr W. This included a questionnaire from the Trustee asking him to “Please answer the following questions to help us to process your transfer request”, which was received on 18 March 2022, after the Trustee was prompted by Lynas Vokes.
17. The Trustee received the member’s completed discharge form, along with the questionnaire, on 21 March 2022, and the completed Receiving Scheme discharge form on 5 April 2022.
18. Mr W responded to Question 9 of the Trustee’s questionnaire as follows:-
  - Q: “Are you aware of how or where your money will be used or invested?” A: “yes”
  - Q: “Do you know if your money will be invested overseas?” A: “Global Funds Used”
19. Based on Mr W’s answer to these questions the Trustee considered that an amber flag, as set out in the Transfer Regulations, may be present and clarification on where Mr W’s funds would be invested was requested from Lynas Vokes on 5 April 2022.
20. The Trustee has stated (which is not disputed) that on 5 April 2022, Lynas Vokes provided the Trustee with investment information about the Receiving Scheme, which included various funds such as the “Global Targeted Value Fund” (**GTVF**) and “the Global Ultra Short Fixed Income Fund” (**GUSFIF**). The information provided to the Trustee included the GTVF policy, which stated that it “primarily invests in shares of smaller companies from developed countries around the world”.
21. On 14 April 2022, the Trustee notified Mr W that an amber flag was present in his transfer request and referred him to MoneyHelper for a safeguarding appointment. On the same day, the Trustee advised Lynas Vokes by email that MoneyHelper appointments were available all day on 26 April 2022.

22. Lynas Vokes disagreed that a MoneyHelper appointment was necessary and, again on 14 April 2022, emailed the Trustee to complain about its “inability to understand the regulations ... [and] ... refusing to transfer these funds”.
23. On receipt of this complaint, the Trustee stated that it sought further legal advice on the interpretation of the Transfer Regulations and in an email to Lynas Vokes on 3 May 2022, it commented as follows:

“Our legal advisers have confirmed that a referral to MoneyHelper is required where “there are any overseas investments included in the receiving scheme””  
... “Our legal advisers have also noted that there is an industry-recognised issue with the way these regulations are drafted, in that they capture a wider range of schemes than is perhaps intended.”
24. Mr W booked and then attended a MoneyHelper appointment on the 13 May 2022. The Trustee received confirmation that Mr W had attended a MoneyHelper appointment on the same day. The Trustee requested the disinvestment of Mr W’s funds on 18 May 2022, and spoke to Mr W on 20 May 2022, to confirm that he wanted to disinvest. The funds were received from Aegon, the Trustee’s investment manager, on 27 May 2022.
25. The transfer to the Receiving Scheme took place on 6 June 2022. The value of funds transferred was £227,946.69. The Trustee had previously provided Mr W with forecasts of £244,756 and £246,580, in March and April 2022 respectively.

### **Summary of Mr W’s position**

26. The Trustee has not correctly interpreted the Transfer Regulations, causing his transfer request to be unnecessarily delayed as it required him to seek a MoneyHelper safeguarding appointment.
27. The Trustee’s refusal to facilitate the timely transfer of benefits has caused him loss (noting the reduction in his transfer value), financial hardship and has delayed his retirement.
28. The Receiving Scheme is a UK pension scheme registered with HMRC and is able to receive a transfer from another UK registered pension scheme. It is administered by Investment Funds Direct Limited, who is authorised and regulated by the Financial Conduct Authority (**FCA**).
29. The investment funds in the Receiving Scheme that Mr W selected to invest in are governed by restrictions defined by HMRC’s manual for qualifying investments. These are the same restrictions as those which would apply to the Trustee if it wished to invest in any overseas assets. In this context, Lynas Vokes refers to HMRC’s pension tax manual 121000 that sets out how overseas pension schemes can be taxed.

30. These investment funds are invested by the fund manager Dimensional Fund Advisors Limited (FCA Registration Number 150100), who is UK based and is authorised and regulated by the FCA.
31. The purpose of the amber flag, as set out in the TPR Guidance, is to protect individuals where there is a lax, or non-existent, regulatory environment or in jurisdictions which allow opaque corporate structures. In this case, the transfer is being made to a “UK authorised and regulated pension”, the funds will subsequently be invested in investment funds by a UK-authorised and regulated firm of investment managers.
32. In its letter to the Trustee dated 13 May 2022, Lynas Vokes confirms that the “investments is (*sic*) made within the UK and not overseas”, and “It is an important distinction to be drawn here that whilst the fund may contain shares within companies who are based overseas, the investment is made in the UK, by a regulated pension scheme. It will not hold overseas assets”.

### **Summary of the Trustee’s position**

33. In his answers to its questionnaire, Mr W informed the Trustee that he understood his investments would be placed in “Global Funds” and Lynas Vokes provided information that the Receiving Scheme included various funds such as the GTVF and GUSFIF.
34. Regulation 9(1) of the Transfer Regulations required the Trustee to refer Mr W to MoneyHelper for specified guidance in respect of pension transfer scams as the Trustee had reason to believe that the Receiving Scheme included an overseas investment. The Transfer Regulations were created to protect members from pension scams and the Trustee takes this very seriously.
35. The Trustee must comply with the Regulations. The Trustee recognises that there has been debate within the pension industry on how the Transfer Regulations should be interpreted. The Trustee considers that its obligations did not fall away because Mr W’s advisers and the Receiving Scheme were UK-based or UK-registered. For the purpose of determining whether there was an amber flag under the Transfer Regulations, the question was whether there were overseas investments included in the Receiving Scheme.
36. The Trustee considered DWP and TPR guidance in respect of Mr W’s transfer. In an email to Lynas Vokes dated 14 April 2022, the Trustee refers to both sets of guidance and quotes the TPR Guidance as follows:

“The specific concern here is not whether the investment is in, for example, a global equity fund but whether the investment is in assets or funds where there is a lax, or non-existent, regulatory environment or in jurisdictions which allow opaque corporate structures.”

37. The email goes on to say that this approach is “not strictly in line with the requirements of the Regulations (which are much broader)” and refers to a telephone call with Lynas Vokes in which it mentioned “that relying on the TPR guidance (for example, not raising an amber flag where the receiving scheme includes global equity funds) is not without risk.”
38. The referral to MoneyHelper was made at an early stage in the transfer process, at a time when further steps were still needed to be carried out as part of the transfer process. At that time, the waiting time for a MoneyHelper appointment was around one week. The Trustee considers that the proposed transfer request was progressed in line with statutory deadlines and that it followed the correct procedure under the Transfer Regulations having sought legal advice.
39. I issued a Preliminary Decision on 14 September 2023.
40. Neither the Trustee nor Mr W provided any new arguments following receipt of my Preliminary Decision.

## Conclusions

### *The Transfer Regulations*

41. The Transfer Regulations set out two conditions, one of which must be satisfied before a statutory transfer can be made. As the First Condition in the Transfer Regulations did not apply in Mr W’s case, the Trustee had to consider whether the Second Condition was satisfied to determine whether it could proceed with the transfer.
42. To satisfy itself that the Second Condition was met, and therefore the transfer could proceed, the Trustee had to decide that none of the red flags in regulations 8(4) and (5) were present.
43. Under regulation 8(4)(b), a red flag is present where the member has not provided evidence that they have obtained the specified guidance from MoneyHelper, after an amber flag is identified.
44. Regulation 9(5)(d) states that there is an amber flag present where:  
“...the trustees ... of the transferring scheme decide that ...(d) there are any overseas investments included in the receiving scheme” (the **overseas investments amber flag**).
45. For these purposes, “included in” in the regulations<sup>5</sup> is defined as “in relation to the investments of the receiving scheme or structure of those investments, means investments that the receiving scheme will make with the member’s pension savings immediately after the transfer is made, or is already making with the pension savings of other members of the receiving scheme”.

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<sup>5</sup> Regulation 9(9)

46. Under regulation 10(3), the trustee of a transferring scheme “may request from the member such evidence or information concerning the circumstances relating to the transfer as they consider relevant in order for them to decide if the red or amber flags are present in respect of the transfer”.
47. Where a trustee has made a request for evidence or information from the member under regulation 10(3), the standard of proof required is that the trustee must decide whether they have “reason to believe” that the amber flag in regulation 9(5)(d) is present.<sup>6</sup> “Reason to believe” means that there is a reasonable foundation for the belief, on the basis of all evidence and information available.<sup>7</sup>
48. If a trustee decides “there are any overseas investments included in the receiving scheme”, an amber flag is present, and the member must obtain specified guidance from MoneyHelper (and evidence this to the trustee) before the trustee can make the transfer.

*Application of “overseas investments” to Mr W’s transfer*

49. I note that the term “overseas investments” is not defined in the Transfer Regulations, although “overseas” is defined as “wholly or partly outside of the United Kingdom”. Overseas investments are “included in” the receiving scheme where that scheme “is already making with the pension savings of other members”. This means that it is not necessary that the transferring member will, in fact, be invested in any overseas investments.
50. The Trustee’s due diligence process involved sending a questionnaire to Mr W that included the question “Do you know if your money will be invested overseas?” to ascertain whether there were overseas investments included in Mr W’s proposed Receiving Scheme.
51. Mr W’s financial adviser confirmed that GTVF and the GUSFIF investments (paragraph 20) were included in the Receiving Scheme. These investments have “Global” in their name and describe themselves as being investments in companies from “countries around the world”.
52. I note that the decision on whether or not there are overseas investments in the receiving scheme is one for the trustees of the transferring scheme (that is, the Trustee) to make. Upon seeking legal advice, the Trustee concluded that it had reason to believe there were overseas investments for the purposes of determining the next steps necessary in dealing with Mr W’s transfer request.
53. Having regard to the Background information section above, it appears that the wording of Transfer Regulations and intended practical application may not be aligned.

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<sup>6</sup> Regulation 6(3)(a)(ii)

<sup>7</sup> Regulation 6(4)



54. Against this back-drop, having regard to the information provided to the Trustee, and also that the Trustee sought legal advice, I make no adverse finding in respect of the Trustee's performance of its duties. The Trustee was entitled to decide that there were overseas investments in the Receiving Scheme, and its literal interpretation of the Transfer Regulations is not unreasonable. Accordingly, the Trustee's actions do not equate to maladministration.
55. It therefore follows that it was not unreasonable for the Trustee to require Mr W to obtain the specified guidance from MoneyHelper before the transfer could be made. In turn, I do not find that there was any action by the Trustee in this regard that caused an unreasonable delay to Mr W's transfer.
56. I appreciate Mr W is aggrieved that his transfer value went down in value. However, transfer values do fluctuate up and down over time, and the value of an investment in a receiving scheme can also change in value.

*Decision*

57. In conclusion, and for the reasons set out above, I consider that the Trustee did not act unreasonably in determining that an amber flag was present in Mr W's transfer request and so referring him to MoneyHelper for a safeguarding appointment. Its actions did not cause unreasonable delay.
58. I do not uphold Mr W's complaint.

**Dominic Harris**

Pensions Ombudsman  
23 October 2023

## Appendix

### The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 - Relevant extracts

#### 6 Standards of proof, relevant evidence or information, and timing for decisions regarding satisfaction of the conditions

- (1) In order for the trustees or managers of the transferring scheme to decide that the First Condition is satisfied, they must satisfy themselves beyond reasonable doubt either that the receiving scheme is established, or listed as authorised, as set out in regulation 7(4).
- (2) Where the trustees or managers of the transferring scheme proceed to make a decision as to whether the Second Condition is satisfied in accordance with regulation 10(2), without making a request for evidence or information from the member in accordance with regulation 10(1) or (3)—
  - (a) in order to reach a decision that none of the red flags in regulation 8(5), and none of the amber flags in regulation 9(5), is present, they must decide on the balance of probabilities that none is present; and
  - (b) where, after applying sub-paragraph (a), they do not reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.
- (3) Where the trustees or managers of the transferring scheme do not proceed to make a decision in respect of the Second Condition in accordance with paragraph (2), and they make a request for evidence or information from the member in accordance with regulation 10(1) or (3)—
  - (a) in order to reach a decision that—
    - (i) either of the red flags in regulation 8(4), or the amber flag in regulation 9(2), is present, they must decide beyond reasonable doubt that it is present; and
    - (ii) any of the red flags in regulation 8(5), or any of the amber flags in regulation 9(3) to (5), is present, they must decide whether they have reason to believe that it is present; and
  - (b) where, after applying sub-paragraph (a), they do not reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.
- (4) In paragraph (3)(a)(ii), “reason to believe” means that there is a reasonable foundation for the belief, on the basis of all of the evidence and information available.
- (5) For the purposes of paragraph (4), “all of the evidence and information available” to the trustees or managers of the transferring scheme means not only evidence or information provided by the member in a formal response to a request made in accordance with regulation 10(1) or (3), but also other relevant evidence or information, including in particular—

- (a) any information provided by the member or another party to the transfer other than in such a response;
- (b) the fact of a general or specific omission of evidence or information from that formal response; or
- (c) any evidence or information obtained by the trustees or managers of the transferring scheme, including in the course of carrying out their duties in relation to that, or another, pension scheme.

## **8 The Second Condition: transfers into all other receiving schemes**

- (1) For the purposes of these Regulations, this regulation will be referred to as “the Second Condition”.
- (2) The Second Condition applies to all transfers to which the First Condition does not apply.
- (3) The Second Condition is satisfied where none of the circumstances in paragraphs (4) and (5) (“the red flags”) are present in respect of the transfer.
- (4) There is a red flag present where the trustees or managers of the transferring scheme decide that—
  - (a) the member has failed to provide a substantive response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3); or
  - (b) further to requiring that the member takes the specified guidance in accordance with regulation 9(1)(a), due to presence of one or more amber flags in respect of the transfer, the member has not provided the specified evidence that this has been taken in accordance with regulation 9(1)(b).
- (5) There is a red flag present where the trustees or managers of the transferring scheme decide that—
  - (a) a person without the appropriate regulatory status has carried on a regulated activity for the member in respect of the transfer in breach of section 19 (the general prohibition) or section 20 (authorised persons acting without permission) of the 2000 Act;
  - (b) the member's request to make the transfer has been made further to unsolicited contact for the purpose of direct marketing of the transfer;
  - (c) the member has been offered an incentive to make the transfer; or
  - (d) the member has been, or considers that they have felt, pressured to make the transfer.

## **9 The Second Condition: requirement to take specified guidance**

- (1) Where the trustees or managers of the transferring scheme decide that one or more of the circumstances set out in paragraphs (2) to (5) (“the amber flags”) is present in respect of the transfer they must require that the member—
  - (a) takes the specified guidance; and
  - (b) provides them with the specified evidence confirming that the member has taken the specified guidance at a time subsequent to being informed of the requirement to do so by virtue of sub-paragraph (a).
- (2) There is an amber flag present where the trustees or managers of the transferring scheme decide that the member has provided a substantive response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3) but the response is incomplete because not all of the evidence or information requested has been provided.
- (3) There is an amber flag present where the trustees or managers of the transferring scheme decide that some or all of the evidence provided in response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3)—
  - (a) may not be genuine; or
  - (b) may not have been provided directly by the member in accordance with paragraph (4) of that regulation.
- (4) There is an amber flag present where the trustees or managers of the transferring scheme decide that all of the evidence required to be provided by the member in accordance with one of the sub-paragraphs of regulation 10(1) has been provided but the evidence does not demonstrate—
  - (a) the employment link, which includes where the evidence does not show employer contributions to the receiving scheme required in accordance with regulation 11(1)(d), or where it shows that the member's average gross weekly salary is below the minimum salary required in accordance with regulation 11(1)(c) and (7); or
  - (b) the residency link.
- (5) There is an amber flag present where the trustees or managers of the transferring scheme decide that—
  - (a) there are any high risk or unregulated investments included in the receiving scheme;
  - (b) there are any unclear or high fees being charged by the receiving scheme;
  - (c) the structure of investments included in the receiving scheme is unclear, complex or unorthodox;

- (d) there are any overseas investments included in the receiving scheme; or
- (e) there has been a sharp or unusual rise in the volume of requests to make a transfer from the transferring scheme, either to the same receiving scheme as that to which the current request to make a transfer is made, or involving the same adviser or firm of advisers (or both).

[...]

(9) In paragraph (5)—

[...]

“included in”, in relation to the investments of the receiving scheme or structure of those investments, means investments that the receiving scheme will make with the member's pension savings immediately after the transfer is made, or is already making with the pension savings of other members of the receiving scheme;

#### **10 The Second Condition: requirements on trustees or managers of the transferring scheme to request evidence or information**

- (1) The trustees or managers of the transferring scheme must request from the member the following evidence, where the Second Condition applies to a transfer into one of the following types of receiving scheme—
  - (a) where the receiving scheme is an occupational pension scheme, subject to subparagraph (c), the evidence specified in regulation 11 to demonstrate the employment link;
  - (b) where the receiving scheme is a QROPS that is not an occupational pension scheme, the evidence specified in regulation 12 to demonstrate the residency link; or
  - (c) where the receiving scheme is a QROPS that is an occupational pension scheme, either the evidence specified in regulation 11 to demonstrate the employment link, or the evidence specified in regulation 12 to demonstrate the residency link.
- (2) Where paragraph (1) does not apply, the trustees or managers of the transferring scheme may proceed to a decision that the Second Condition is satisfied without making a request for evidence or information in accordance with paragraph (3), on the basis of all other relevant evidence or information including that set out in regulation 6(5)(a) and (c).
- (3) Where the trustees or managers of the transferring scheme do not proceed to a decision in accordance with paragraph (2), including because paragraph (1) applies, they may request from the member such evidence or information concerning the circumstances relating to the transfer as they consider relevant in order for them to decide if the red or amber flags are present in respect of the transfer.