

Appendix

Full reply from Squire Patton Boggs about data protection issues when processing overseas transfers:

“Where a member makes enquiries or a request to transfer benefits overseas, this may involve corresponding with the member (or, to a certain extent the recipient scheme or third parties representing the member) who may be based overseas, and outside of the EEA. The ultimate transfer payment itself may also require the transfer of personal data (noting that from a practical perspective we are not aware of the exact data which would be required to complete a transfer payment or whether this could be anonymised, for example).

As an initial point, due to risks of pension scams (which is reflected in the new transfer regulations), in our view, administering authorities should not deal with IFAs directly, generally for risk management purposes. In cases where a member provides a letter of authority or similar, asking the Fund to provide information to his IFA, administering authorities should consider the extent to which it is appropriate to do so under the new regulations.

In our experience, information in relation to a member's transfer would normally be provided directly to the member (for the member to then pass on to his IFA or the receiving scheme should he wish to do so). If the member is based in the UK (or the EEA), then compliance with the normal UK/ EU requirements should be sufficient in relation to the transfer.

If the member is based outside of the EEA then, strictly, the transfer of personal data to the member would be to a country outside of the EEA and the requirements which we previously highlighted would apply (i.e. there is a requirement to specify where data will be transferred to a third country and the existence or absence of an adequacy decision or reference to the appropriate safeguards used to protect it and the means by which the individual can obtain a copy of them). **Whilst a general statement will suffice for the Fund's privacy notice, for a particular transfer of benefits administering authorities should explain to the member at the start of the transfer process that their explicit consent will be required for any transfer of personal data overseas. Where the member or receiving scheme is**

outside the EEA, the explanation should note that legal safeguards in the recipient country may be inadequate and the Fund cannot put in place binding contractual terms with the member's chosen provider, but the Fund will use its normal processes to ensure the security of any data during transfer (although cannot guarantee the security of data beyond that transfer).

Note that where the recipient country does not have an adequacy decision or appropriate safeguards, it is possible to rely on the individual's explicit consent as justification for making the transfer (where he has been informed of the possible risks of that transfer that arise from the absence of an adequacy decision or appropriate safeguards, as we have suggested). Even if personal data is provided directly to the member within the UK/EEA when the Fund gathers information about the transfer, there will inherently always be the issue of making a transfer payment to an overseas pension scheme. The scheme administrators will be able to confirm how much personal data is actually required to be transferred as part of the transfer payment process. We note that administering authorities will collect and process information containing personal data from a member whilst deciding whether to approve the transfer (and more so where a transfer is to an overseas pension scheme as additional evidence (such as utility bills/insurance documents) is required). However, we recommend confirming the level of personal data (if any) which would need to be transferred for the purposes of processing the transfer itself. If the answer is that no personal data need be transferred when making the transfer payment itself, obtaining member consent for that part of the process would not be necessary and instead, a potential "safeguard" could be to ensure that transfers are carried out by using anonymised membership references (or something similar) to avoid having to send any personal data."