One of the valuable services that Aries Insight offers to members is the Aries Help Desk.

Our members can ask us any technical questions they come up against and we will address them, undertaking any research needed.

We later capture our replies in the Aries system as a "technical queries database" so other members can benefit from this research too. (All queries are, of course, suitably anonymised.)

For this Insight, we look at a handful of recent Help Desk queries.

**Cancelling a Transitional Tax-Free Amounts Certificate ("TTFAC")**

As the number of TTFACs increases, we are receiving queries about purported TTFACs that are missing information or specify the wrong data, with a core theme of what to do with these erroneous documents.

One of these queries involved a 'TTFAC' that expressed the member's available lump sum allowance ("LSA") / lump sum and death benefit allowance ("LSDBA") instead of the member's transitional tax-free amounts. Must that 'TTFAC' be cancelled?

We start by looking at what a TTFAC is. Under paragraph 127(1) and (4) of Schedule 9 to the *Finance Act 2024* ("FA 2024"), a TTFAC is a certificate relating to the individual that:

- Has been issued by a certification administrator (usually a scheme administrator for a registered pension scheme) in response to an application made by the member (or if the member has died, their personal representatives); and

- Certifies the certification administrator's satisfaction as to the member's transitional tax-free amounts and contains specified data.

The specified data a TTFAC must contain is:

- The amount the certification administrator is satisfied is the member's lump sum transitional tax-free amount;

- The amount the certification administrator is satisfied is the member's lump sum and death benefit transitional tax-free amount;

- The member's lifetime allowance ("LTA") previously used amount, expressed as a percentage of the standard LTA applying to the member for the 2023/24 tax year; and

- The member's name, address, and NI number.

Importantly, because the legislation specifies what a TTFAC is, any document that does not fully match that specification (for example, because certain data is missing) is ***not*** a TTFAC.

Having established that, we move to the provision for TTFAC cancellation. This is in paragraph 127(6) of Schedule 9 FA 2024, under which if a certification administrator has reason to believe that TTFAC does not accurately reflect either or both of the member's transitional tax-free amounts, that certification administrator must cancel the TTFAC. They must do this by giving notice of cancellation to the member (or if the member has died, to their personal representatives).

As a reminder, our enquirer had received a 'TTFAC' that incorrectly specified available LSA / LSDBA, rather than transitional tax-free amounts.

Because this document does not express the member's transitional tax-free amounts, it does not satisfy the conditions to be a TTFAC; it is ***not*** a TTFAC and cannot be treated as one. The measures in paragraph 127 do not apply to this 'non-TTFAC', so it cannot be cancelled using those measures. However, a non-TTFAC naturally cannot be used for the purposes of a TTFAC, and the scheme may reject the document as unsuitable.

**What effect do the conditions for transfers regulations have on the statutory transfer settlement deadline?**

We sometimes receive enquiries asking about the interaction between *The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021* (SI 2021/1237) ("the conditions for transfers regulations") and the six-month deadline for settling a statutory transfer that arises under section 99(2) of the *Pension Schemes Act 1993* ("PSA 1993").

To get to the bottom of this, it is necessary to consider some of PSA 1993's earlier sections.

Section 95(6ZA) prevents the trustees or managers of the ceding scheme from using a member's cash equivalent to make a statutory transfer where neither the First Condition nor the Second Condition in the conditions for transfers regulations is satisfied.

Moving to section 98 of PSA 1993, this provides for situations in which a member loses the right to make a statutory transfer. One of these is where the trustees or managers are prevented from doing what the member requires because the First Condition or the Second Condition is not met.

Now back to section 99(2) of PSA 1993, where the six-month deadline is provided for. Subject to "the following provisions of this section" (i.e. Section 99), the trustees must do what the member requires within a specified timescale (generally six months, of course).

One of "the following provisions of this section" is section 99(2ZA). That is important because it disapplies section 99(2) where the trustees or managers have been unable to carry out what the member requires because the First Condition or Second Condition of the conditions for transfers regulations has not been satisfied.

Now, we need to look at one more thing: when is the First or Second Condition actually satisfied? Regulation 4(1) of the conditions for transfers regulations contains the answer. It provides that the First Condition or the Second Condition (as applicable) is satisfied when the trustees or managers of the transferring scheme decide it is. It follows that neither Condition is satisfied unless and until the trustees or managers decide that the relevant one is satisfied.

Let us summarise all of the above:

- A statutory transfer must be made by the six-month deadline; but
- If neither the First Condition nor the Second Condition is satisfied in respect of a transfer:
  - The six-month deadline is disapplied for that transfer;
  - The trustees cannot make that transfer as a statutory transfer; ***and***
  - The member loses the right to make that transfer as a statutory transfer.

In practice, all this together means that if neither the First Condition nor the Second Condition for a transfer is satisfied before the six-month deadline for that transfer, that transfer cannot then be made as a statutory transfer.

These rules create a situation in which the necessary processes, including:

- any information and evidence requests the trustees or managers must/may make;
- response(s) to any such requests by the member (or a representative where applicable);
- decisions as to the presence of Red/Amber Flags by the trustees or managers;

- (if there is an Amber Flag) attendance of the MoneyHelper session (and provision of the proof of attendance) by the member; ***and***

- the ultimate decision by the trustees or managers as to whether the First Condition or Second Condition (as applicable) is satisfied

must ***all*** take place before the six-month deadline if that transfer is to be a statutory transfer.

Furthermore, once all that is successfully achieved, the transfer payment must then be made by the six-month deadline too - if it is not, the cash equivalent must be increased.

The timing is tight. Trustees or managers may, in certain situations, apply for the six-month deadline to be extended.

**Do the rules for payment of a trivial lump sum in connection with a 'scheme protected' pension commencement lump sum ("PCLS") mean the member may never accrue benefits under the paying scheme again?**

The rules for the payment of a trivial commutation lump sum ("TCLS") appear in paragraphs 7 to 9 of Schedule 29 to the *Finance Act 2004* ("FA 2004").

The payment of a scheme protected PCLS must usually be accompanied by the commencement of a connected pension for the member, just like for a 'normal' PCLS.

Inevitably there are situations where the maximum lump sum payable under scheme protected PCLS rules is calculated, and the residual amount to provide a connected pension for the member is too small to commence any kind of pension.

Here, article 23C of *The Taxation of Pension Schemes (Transitional Provisions) Order 2006* (SI 2006/572) ("the Order") comes into play. It modifies the TCLS rules in Schedule 29 of FA 2004 (in particular by inserting paragraphs 7A and 9A) to permit a member in this position to take their maximum scheme specific PCLS and take the small residual amount as a trivial lump sum, which we will call a 'special TCLS'.

Inserted paragraph 7A(1) features the conditions that must be met to take this special TCLS. These include that "the PCLS conditions are satisfied". These PCLS conditions are not to be confused with the wider 'conditions to take a PCLS'; they are special conditions for the purpose of the special TCLS. They are specified in paragraph 7A(2), and require that:

- the special TCLS is paid in connection with a scheme protected PCLS;

- the special TCLS is paid no later than one month after the PCLS; and

- since the payment of the PCLS:

    - no contribution has been made to the scheme in respect of the member;

    - no recognised transfers have been made in or out of the scheme in respect of the member; and

    - no annuity or scheme pension has been secured for the member using the member's pension rights in the scheme.

At first glance, the third bullet point appears to indicate that no contributions / transfers / annuity or scheme pension may ever occur in respect of the member under the scheme again. However, that is not the case, because these are conditions to be met ***at the time the special TCLS is paid***.

Putting this in simple terms, the no contributions / transfers / annuity or scheme pension requirement applies ***in the period between the payment of the scheme protected PCLS and the special trivial commutation lump sum***.

In other words, paying a scheme protected PCLS opens a special TCLS 'window' of not more than one month, in which a special TCLS may be paid (if all relevant conditions are met, of course). This window will close on the earliest of:

(i) the date the special TCLS is paid; and

(ii) the date that is one month after the scheme protected PCLS was paid (whereupon if no special TCLS has been paid, it will be too late to pay one).

If a special TCLS is to be paid, then ***while the window is open*** there can be no contributions, etc. for the member. However, there can be contributions, etc. ***after the window closes*** (i.e. after the special TCLS is paid).

Now, both a 'standard' TCLS and a special TCLS must extinguish the member's entitlement to benefits (to which they were not entitled on 5 April 2006) under the paying scheme. This arises under paragraph 7(1)(d) of Schedule 29 for standard TCLS, and inserted paragraph 7A(1)(d) of Schedule 29 for a special TCLS.

HMRC provides guidance on the reference to extinguishing the member's entitlement for the purposes of a TCLS in PTM063500, confirming it is a reference "to all the rights that could reasonably have been known about at the time of the payment. The lump sum will not cease to be an authorised payment purely because further entitlement is later created that could not have been known about at the time of the initial payment..."

While this appears in guidance for the standard TCLS, it is reasonable to take it as applying equally to the special TCLS and is further evidence that a member who has been paid a scheme protected PCLS in connection with a special TCLS may later accrue further benefits.

So, a scheme paying a special TCLS does not have to make sure there are never any contributions, etc. for the member again. The scheme simply must ensure there are no contributions, etc. while the special TCLS window is open. A member may rejoin the scheme at a point ***after*** it has paid them a scheme protected PCLS in connection with a special TCLS.

**Did you find this Aries Insight useful?**

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If you have any comments, or suggestions for topics that you would like to see covered in a future Aries Insight, then please let us know.

We produce these 'Insights' for Aries Members to highlight key legislative changes and other topics of interest. ***As they are only short articles, they cannot always cover every aspect of the topic being discussed and must not be considered as legal or financial advice.***

**Aries Insights are intended to reflect the position as at the date the Insight was issued. Please consider the possibility that the relevant legislation may have changed since an Insight was issued.**

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