



- Department for Work & Pensions (<https://www.gov.uk/government/organisations/department-for-work-pensions>)
- HM Treasury (<https://www.gov.uk/government/organisations/hm-treasury>)

See more information about this Open consultation (<https://www.gov.uk/government/consultations/pension-scams>)

Open consultation

Pensions scams: consultation

Published 5 December 2016

Contents

1. Introduction
2. What is a pension scam?
3. Banning cold calling in relation to pensions
4. Limiting the statutory right to transfer
5. Making it harder to open fraudulent schemes
6. Consultation questions
7. Consultation principles

1. Introduction

For most people in the UK, their pension savings will be their largest financial asset, which they will save towards over the course of their working lives, in order to provide them with a comfortable income in retirement. Through generous tax reliefs, National Insurance Contributions relief on employer contributions, and policies such as automatic enrolment, the government has sought to incentivise pension saving. These policies have been very successful – automatic enrolment will lead to around 10 million people newly saving or saving more by 2018, generating around £17 billion a year more in workplace pension saving by 2019-20.

However, because of the size of individual pension pots, and because people do not have to engage with their savings until much later in life, pension savings are an attractive target for fraudsters. Pension scams can cost people their life savings, and leave people facing retirement with limited income, and little or no opportunity to build their pension savings back up.

The government takes the threat of pension scams very seriously. The government is committed to protecting people by helping them to avoid putting their money into scams (including through risk warnings, high profile media campaigns, and free and impartial guidance from Pension Wise (https://www.pensionwise.gov.uk/?gclid=CjwKEAiAjvrBBRDxm_nRusW3q1QSJAAzRI1tOW3lc91M1sPnHF6KD4Ik88NIXdGfqWqI4edcbI9U2BoCRGnw_wcB) and the Pensions Advisory Service (<http://www.pensionsadvisoryservice.org.uk/>); and by pursuing fraudsters wherever possible. This consultation sets out the next steps in the government's efforts.

1.1 Evidence of problem

The models used by pension fraudsters often span departmental and agency boundaries and can be complex and multifaceted. In order to tackle pension scams, the government established Project Bloom, a cross-government taskforce led by the Pensions Regulator (TPR) and comprising of government, regulators and law enforcement agencies; to monitor trends, share intelligence on emerging threats, and help co-ordinate action to tackle pension scams.

Project Bloom has been acting to raise awareness of pension scams, in particular through TPR's "Scorpion" (<http://www.thepensionsregulator.gov.uk/pension-scams>), and the Financial Conduct Authority's "Scam smart" campaigns (<http://scamsmart.fca.org.uk/>). However, it has become increasingly clear that more direct intervention is necessary to curb the threat of pension scams in the UK:

- research by the Money Advice Service ¹ suggests that there could be as many as 8 scam calls every second – the equivalent of 250 million calls per year. Citizens Advice have calculated that 10.9 million consumers have received unsolicited contact about their pension since April 2015 ²
- there were 30,000 'Defined Contribution' scheme transfers in 2015/16, representing £1 billion of assets. Industry estimates suggest that fraudsters could be behind as many as one in 10 pension transfer requests ³
- individuals reported nearly £19 million in suspected pension liberation fraud between April 2015 and March 2016 – twice as much as for the same period in 2014-15

Pension investments are long-term, so many individuals may not recognise that they have been the victim of a pension scam until they seek to access their savings. There are also concerns that some suspected scams are underreported to the police, or other law enforcement agencies. People may also be dissuaded from reporting pension scams, because they don't want to acknowledge that an investment may be a scam, because they are embarrassed, or because they are worried about facing a tax charge for unauthorised pension access. The government is working with HMRC, Action Fraud and the National Fraud Intelligence Bureau through Project Bloom, to encourage and enable the consistent reporting of pension scams data from firms, individuals, law enforcement agencies and regulators.

1.2 Purpose of consultation

The government is consulting on a package of measures aimed at tackling three different areas of pensions scams:

- a ban on cold calling in relation to pensions to help stop fraudsters contacting individuals
- limiting the statutory right to transfer to some occupational pension schemes
- making it harder for fraudsters to open small pension schemes

A cold calling ban will cut off a key source of pension scams ⁴, while significantly simplifying the anti-fraud message to the general public: that you will never be cold called about your pension. A range of stakeholders have publicly called for this, and a recent parliamentary petition supporting the banning of cold-calling in relation to pension investments has received widespread media coverage.

Limiting the statutory right to transfer to some occupational pension schemes will address one of the key routes used to access people's pension savings through a fraudulent pension scheme. Many stakeholders have asked for the law to be changed, so that firms and trustees can block pension transfers when there are concerns over the legitimacy of the receiving vehicle. For example, this could be where the individual does not receive any income from the sponsoring employer of what claims to be the receiving occupational pension scheme. In order to ensure that firms are not able to block legitimate transfers the government is consulting on clear, objective criteria regarding the grounds on which transfers could be blocked.

Making it harder to set up and run fraudulent pension schemes will act upon another key aspect of pension fraud. At present there are about 800,000 pension schemes in the UK, the vast majority of which are small single member schemes. Fraudsters have identified the opportunity to set up small tax-registered pension schemes that require no registration with the Pension Regulator (TPR), and are often using a dormant company as the sponsoring employer for the scheme.

1.3 How to respond

The government would welcome the views of all stakeholders on the issues raised in this consultation. The consultation begins with the publication of this document and will last for a period of 10 weeks.

Please respond by midnight on Monday 13 February 2017. Responses for the consultation should be sent to: PensionScamsConsultation@HMTreasury.gsi.gov.uk

When responding please state whether you are responding as an individual or as part of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where applicable, how the members' views were assembled.

2. What is a pension scam?

Pension scams can take a number of different forms. In the recent past, pension scams were most commonly aimed at individuals who had not yet reached minimum pension age. Pension scheme members were fraudulently encouraged to transfer their pension into a pension scheme under the pretext of obtaining cash, tax-free, ahead of the statutory minimum pension age. In reality such early access is subject to an unauthorised access tax charge of 55% for accessing a pension early. In many cases, the member was also given unrealistic assurances about how well the investment would perform.

Concerns have also been raised about whether the increase in flexibility, post-April 2015 might make people more vulnerable to investment scams involving their pension savings. These scams usually encourage pension savers to invest in unregulated investments – in particular alternative investments such as overseas property or natural resources, sometimes offering a guaranteed investment return – with the majority of investment options being based overseas. However, it is important to note that the underlying investments may be legitimate, and in some circumstances could be the right investments for some people: for example, where a wealthy individual has a high appetite for risk.

The hallmarks of pension scams in relation to these products include where the individual has been misled about the nature of, or risks attached to, the purported investment, or their appropriateness for that individual investor. In some instances, the scam will be an outright fraud. In other cases, the firm's conduct may fall short of amounting to fraud, but the scam may nevertheless result in a pension saver losing their life savings or facing a considerable tax bill. In the case of unregulated collective investment schemes, under FCA rules, these schemes cannot be marketed to most retail customers. This type of scam may target individuals of all ages, and may also be used to mislead individuals over minimum pension age to withdraw their pension and use the funds to invest in these arrangements, without a formal 'pension transfer' having to take place.

The government recognises that people may need help navigating the new options available to them as a result of the pension freedoms, which is why it introduced Pension Wise (https://www.pensionwise.gov.uk/?gclid=CjwKEAiAjvrBBRDxm_nRusW3q1QSJAAzRI1tOW3Ic91M1sPnHF6KD4Ik88NIXdGfqWqI4edcbI9U2BoCRGnw_wcB) – to provide free, impartial guidance to people over 50, thinking about accessing their pension flexibly. Pension Wise specifically alerts its users to potential scams during appointments, and the Pension Wise website (https://www.pensionwise.gov.uk/?gclid=CjwKEAiAjvrBBRDxm_nRusW3q1QSJAAzRI1tOW3Ic91M1sPnHF6KD4Ik88NIXdGfqWqI4edcbI9U2BoCRGnw_wcB) and summary document that users receive following their appointment contain guidance on avoiding scams. Pension Wise also makes it clear through advertising and their website that no cold calls are ever made by its guiders.

2.1 Definition of a pension scam

The government previously considered pension scams to be broadly “attempts to release funds from HMRC registered pension schemes in an unauthorised way”. However, in light of the pension freedoms, the government believes that fraudsters’ focus may shift to a wider category of activities, through which to perpetuate scams involving pension savings. Project Bloom has therefore developed a definition that focuses on a wider set of activity that it believes should be considered as pension scams, namely:

“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 normally not anticipated by the member
- persuade individuals over the age of 55 to flexibly access their pension savings in order to invest in inappropriate investments
- persuade individuals under 55 to transfer their pension savings in order to invest in inappropriate investments

where the scammer has misled the individual in relation to the nature of, or risks attached to, the purported investment(s), or their appropriateness for that individual investor.”

The techniques used to perpetuate pension scams include:

- high pressure sales tactics, including cold calling
- attempts to discredit the individual's existing arrangement
- ignoring or claiming to have dealt with the tax consequences
- promises of 'guaranteed' high returns
- descriptions that do not properly portray the risks of the investments
- overseas investments that lack local regulation or compensation if things go wrong

Question 2.1

Does the definition in 2.1 above capture the key areas of consumer detriment caused by pension scam activity?

Question 2.2

Are there any other factors that should be considered as signs of a scam?

3. Banning cold calling in relation to pensions

3.1 The issue

Cold calling is the most common method used to initiate pension fraud. In 2013, 97% of cases brought to Citizen's Advice involving pensions liberation scams stemmed from cold calling⁵. Age UK found that 53% of people age 65+ believe they have been contacted by fraudsters. Additionally, the 87% of unsolicited contact reported to the Financial Conduct Authority was via telephone⁶. As discussed in Chapter 1, the scale of the problem is not reflected in current statistics due to under reporting.

Fraudsters often call individuals posing as legitimate businesses and can be very convincing, even offering false FCA registration numbers (which itself amounts to a criminal offence) and professional looking marketing materials. Additionally, consumers are highly likely to miss the signs of a scam; a Citizens Advice poll found that 9 in 10 people would miss the common warning signs of a scam such as unrealistically high or guaranteed investment returns, or offers of a free pension review. These factors combined mean that engaging in conversation with a cold caller about pensions can pose a significant risk to consumers.

The government has chosen to consult on a ban on cold calling in relation to pensions as a priority as, for many people, their pension is their single biggest asset (aside from their property), on which they will depend throughout their retirement. Pension scams can have devastating consequences such as the loss of an entire pension fund, and the chances of recovering these losses are very low, leaving victims without the means to fund their retirement. Banning cold calling in relation to pensions will cut off scams at the source, encouraging consumers to put the phone down immediately.

Question 3.1

In your experience, how are consumers affected by cold calling about pensions? Do any consumers benefit from cold calling about pensions?

3.2 The current rules on cold calling

Currently, the Financial Conduct Authority (FCA), the Information Commissioner's Office (ICO) and Ofcom have powers to regulate cold calls to an extent, but they do not have the powers to introduce a full ban.

The FCA does ban some types of cold calls, and applies restrictions to others. The restrictions only apply to FCA authorised firms, so many cold calls will be outside of the scope of these rules. In relation to pension reviews, calls can be made if the recipient is an existing client who expects to receive such calls, or a prospective client in certain circumstances, for example if they have opted into calls.

The ICO is responsible for the regulation of the Privacy and Electronic Communications Regulations (PECR) 2003, and regulates unsolicited direct marketing calls which originate from the UK or are made from abroad on behalf of UK companies. The ICO can take enforcement action against organisations that, without consent, make automated and direct marketing calls to numbers registered with the Telephone Preference Service. Consent must be clear and informed. Consent can also be given to allow contact by third parties.

Ofcom also has powers under sections 128 to 130 of the Communications Act 2003 to enforce against "persistent misuse" of electronic communications networks or services. Ofcom can exercise its powers to investigate silent or abandoned calls (which may have been intended to be direct marketing calls). If during the course of its investigations, Ofcom finds that the caller's conduct could amount to persistent misuse (for example, by making silent and abandoned calls in accordance with section 128 of the Communications Act 2003), Ofcom have the power to issue a Civil Monetary Penalty of up to £2 million under the persistent misuse provisions.

The government has taken a number of recent actions to tackle nuisance calls more widely, including

- introducing a measure in the Digital Economy Bill, making it a requirement for the Information Commissioner to issue a statutory code of practice on direct marketing
- amending the Privacy and Electronic Communications (EC Directive) Regulations (2003) (PECR) to require all direct marketing callers to provide Caller Line Identification
- lowering the legal threshold at which the ICO may impose a monetary penalty on organisations breaching PECR
- making it easier for the ICO to more effectively share information with Ofcom in relation to nuisance calls through an amendment to the Communications Act 2003

3.3 Banning cold calling in relation to pensions

The government proposes to ban all cold calls in relation to pensions. This will be achieved through primary legislation.

The proposed ban will send a clear message to consumers that no legitimate firm will ever cold call them regarding their pension, encouraging consumers to put the phone down on cold callers immediately. This will cut off the main mechanism used to persuade people that they are offering legitimate pension investments and services, and reduce the number of consumer requests to transfer to illegitimate schemes.

The government will also give the ICO the ability to use their existing enforcement powers to impose civil sanctions on firms located or operating in the United Kingdom who breach the ban, including the power to issue fines of up to £500,000.

Other agencies, including the police and the FCA already have wide ranging powers to tackle fraudulent activity. These agencies will continue to work to address the problem of pension scams.

3.4 The scope of the ban

The government is proposing a ban with a wide scope to prevent it being circumvented by firms adapting their business models to avoid the ban. It is seeking views on the scope of the ban.

3.5 The scope of 'in relation to pensions'

The proposed ban is intended to catch various types of pension scams, including 'free pension reviews' and misleading offers of high return pension funds. The government has outlined below the sorts of phone conversations that it intends to fall within the scope of the ban:

- offers of a 'free pension review', or other free financial advice or guidance
- assessments of the performance of the individual's current pension funds
- inducements to hold certain investments within a pensions tax wrapper including overseas investments
- promotions of retirement income products such as drawdown and annuity products
- inducements to release pension funds early
- inducements to release funds from a pension and transfer them into a bank account
- inducement to transfer a pension fund
- introductions to a firm dealing in pensions investments
- offers to assess charges on the pension

The conversations that the government intends to be within the scope of the ban include both inducements to transfer funds directly from a pension scheme to a scam vehicle, and to move the funds into a bank account. They also include calls that result in 'hand-offs' to other organisations involved in fraudulent behaviour. The government believes that this will ensure that the majority of pension scam models are within scope.

The government does not have powers to take action against firms making calls from overseas, if the company is not registered in the UK. However, the strong message that a ban sends to consumers will prevent them from engaging with cold callers from overseas, protecting them indirectly.

Question 3.2

Do you agree that the scope of the ban should include the actions set out in paragraph 3.5 above? Are there any other activities that should fall within the scope of the proposed ban on pensions cold calling?

3.6 Excluding legitimate interactions

The proposal is not intended to apply to legitimate interactions, including where consumers have expressly requested information from a firm, or where an existing client relationship exists.

In this context it is proposed that the meaning of a legitimate existing relationship would be similar to the concept of an 'established existing client relationship' as set out in FCA rules. FCA rules say that an established existing client relationship with a firm exists only where the consumer envisages receiving calls from them. If this approach was adopted, examples of callers who would not be in scope of the ban would be:

- an individual's current pension provider
- pension providers holding funds from an individual's previous employments
- a financial adviser the individual has previously had appointments with

If a consumer has not previously engaged directly with a firm, they reasonably would not expect to receive calls from them. Therefore, examples of callers who would not fall within the definition of an 'existing client relationship' and would be covered by the proposed ban would be:

- a firm who has been passed a consumer's details by a third party
- a pension provider offering a deal on their products if the individual switches provider
- a pensions adviser who has acquired the individual's details from a public directory

The government does not intend to change existing provisions which make it illegal to imitate an individual's pension provider or an authorised firm.

The proposed ban is also intended to prevent consumers who inadvertently 'opt-in' to receiving third party communications being targeted. While responses to express requests for a call from the consumer are not within scope of the proposal, the government will make it clear that failing to opt out of calls from third parties, or agreeing to standard terms that include provision for calls without separately expressing willingness to receive them, does not constitute an express request.

Examples of calls that would be in response to an 'express request' could be:

- a provider returning a call to a consumer who has left a voicemail, asking for further information on their products, after seeing an advert in the paper
- a financial adviser calling a prospective client who has sent them an email enquiry through an adviser database

Examples of calls that would not be in a response to an 'express request' could be:

- calling a customer of an online shopping website who has opted to receive third party marketing calls
- a call that follows a marketing letter in the post, which says that the individual will receive a call about their pension if they don't opt out via text
- a call to a consumer who has just purchased a financial product, where the terms and conditions for that product contained a clause stating that the firm can pass their details to other providers of financial products

Question 3.3

Do you agree that existing client relationships and express requests should be excluded from the proposed ban?

3.7 Electronic communications

The government believes that phone calls are the form of communication that present the greatest risk to consumers. This is because pension scammers are able to draw consumers in and persuade them that they are legitimate more effectively over the phone, compared to via other forms of communication such as e-mails, which consumers can more easily disregard.

However, the government appreciates that there may be a case for extending the proposal to all electronic

communications, for example e-mail and text messages.

Question 3.4

What would the costs and benefits be of extending the proposed ban to include all electronic communications?

3.8 Interaction with the Privacy and Electronic Communications Regulations (PECR)

The proposals outlined in this consultation are only intended to apply in relation to cold calls regarding pensions. Direct marketing calls that comply with PECR regulations will still be permitted for calls in relation to other products and industries.

PECR contains its own concepts of live and automated marketing calls and prior existing relationships. These concepts will continue to apply to other types of direct marketing call, and the interpretation of these definitions within PECR will not change as a result of the ban on cold calling in relation to pensions.

Question 3.5

How can the government best maintain the clarity of existing PECR concepts in light of the proposed ban on pensions cold calling?

3.9 Raising awareness

For the proposal to achieve its intended outcome of reducing the number of consumers who fall victim to pensions scams, it is essential that consumers are aware that all cold calls they receive in relation to pensions are illegitimate.

The government proposes using a number of channels to publicise the ban to as many consumers as possible.

These include:

- pension providers
- government-backed guidance providers, including the Money Advice Service and Pension Wise
- the FCA's 'Scam smart' campaign (<http://scamsmart.fca.org.uk>)
- the Pensions Regulator and the Pensions Ombudsman
- the Financial Ombudsman
- publications issued by Action Fraud
- well known consumer publications such as Money Saving Expert and Which? Magazine
- ICO Campaign

The government welcomes input on other ways to publicise the ban.

Question 3.6

How else can the government best ensure consumers are aware of the ban?

3.10 Enforcement

Banning cold calling in relation to pensions is an effective way of enabling enforcement action against the perpetrators of pension scams. This is because it is simpler for an enforcement body to show that an individual has been cold called, than to prove that the firm involved has engaged in a fraudulent activity. This would require thorough investigation into the investments being offered, and the details of their business model.

The proposal will be enforced by ICO who currently regulate firms making unsolicited direct marketing calls. The ICO has a number of enforcement powers that it can use to tackle firms in breach of the PECR. These powers include:

- serving enforcement notices and 'stop now' orders
- issuing monetary penalties, requiring organisations to pay up to £500,000 for serious breaches

To date, the ICO has issued fines totalling almost £3.7 million to companies behind nuisance marketing. This year alone, ICO has fined firms responsible for more than 70 million calls and nearly 8 million spam text messages.

The government proposes giving ICO the power to use its existing enforcement toolkit to enforce the proposal to ban cold calling in relation to pensions. It believes that the ICO is well placed to enforce the ban due to its expertise in this area and broad range of enforcement options.

Like many regulators, the ICO takes a risk based approach to enforcement action. The ICO will be able to take action against those who breach the ban, targeting their enforcement action at the most serious cases. The threat of enforcement action creates a deterrent and makes operating a pensions scam higher risk and therefore less appealing.

The government has also made it easier for the ICO to take action against rogue companies by lowering the legal threshold at which enforcement action can be taken. This means that the ICO does not have to prove substantial damage or substantial distress by a company before action can be taken.

The government has already introduced secondary legislation amending the Privacy and Electronic Communications Regulations 2003 to require all direct marketing callers to provide their Calling Line Identification (CLI), so that consumers can determine who is calling them and therefore allow any unwanted calls to be more easily identified and reported to the regulator.

In addition, enforcement could be strengthened by other measures such as encouraging consumers to report cold calls about pensions and looking for opportunities to increase data sharing between relevant partner agencies.

Question 3.7

Do you have any views on enforcement mechanism set out in paragraphs 3.10 above?

3.11 Impacts on firms

The government is seeking information on any potential impacts on firms as a result of this change.

The government anticipates that banning cold calling in relation to pensions will result in a number of benefits for businesses:

- increasing consumer confidence in the financial services sector: sending a clear message to consumers that no legitimate firm will ever cold call a person about their pension will enable consumers to distinguish between legitimate firms and pension scams more easily. This will give consumers greater confidence that their pension funds are secure when engaging with financial services firms

- increasing trust in the financial advice sector: financial advisers have expressed concerns that calls from rogue pension introducers posing as financial advisers, and offering free pension reviews, damages the sector's credibility. The government anticipates that taking a hard line on pensions cold calls will prevent consumers from being deceived by pension scammers posing as financial advisers, increasing trust in the sector
- keeping money within the regulated system: the government anticipates that banning cold calling in relation to pensions will result in fewer transfers to fraudulent pension schemes. This will result in pension funds being retained within the regulated system, benefitting pension providers who will retain more customers
- *fewer transfer requests: fewer requests to transfer to suspect pension schemes mean that providers will need to spend less time conducting lengthy due diligence processes to attempt to prove that the scheme is fraudulent. This may result in both a time and monetary benefit

The proposed approach, which allows calls where an existing relationship exists or at the express request of the recipient, is intended to allow legitimate firms to continue to operate without issue. The government is seeking evidence on whether there is any legitimate cold calling in relation to pensions occurring where an existing relationship does not exist.

Question 3.8

Is there any reason why legitimate firms' business models should be affected as a result of the ban?

Question 3.9

Do you have any other views or information the government should consider in relation to the proposed ban on cold calling in relation to pensions?

4. Limiting the statutory right to transfer

4.1 The issue

Pension scams activity is particularly focused around transfers to apparently legitimate pension schemes. These schemes are established or operated by fraudsters for the purpose of encouraging people to invest in unregulated investments such as exotic or 'too good to be true' opportunities which collapse, taking the investments with them, or exposing the member to a high risk of capital loss.

The government has received representations from the pensions industry and regulators to tighten up the transfer process in order to protect individuals' savings. Under current law ⁷, trustees or managers of schemes can find themselves in a difficult position when faced with a suspicious transfer. To refuse a transfer, trustees and managers must be able to show the transfer falls outside of the existing legislation and that there is no statutory right to transfer. Often it can be difficult to prove that the receiving scheme is not a legitimate pension scheme or that the transfer will not be used to provide transfer credits under the rules of that scheme.

On receipt of a transfer request, trustees or managers are required to exercise due diligence, for example, by examining the status of the receiving scheme. Suspicion is generally aroused through the behaviour of the scheme member, for example, if they appear desperate, or if the receiving scheme is unknown. Trustees or managers can sometimes find themselves in difficult positions where they have serious concerns that the receiving scheme is not legitimate and may be a scam.

Earlier this year, the legal position of trustees' and managers' ability to block transfers was explored in a High Court ruling ⁸. The case was heard on appeal from a decision of the Ombudsman, who had supported the decision of a personal pension manager which had used due diligence to block a transfer to a scheme about which there were concerns. The Ombudsman's determination was that there was no statutory right to transfer

as there was no earnings link with the sponsoring employer of the receiving scheme (i.e. the individual was not being paid by the sponsoring employer). It is the government's view that there is no explicit rule in the relevant pensions legislation which expressly states that there must be such an earnings link to facilitate a transfer.

This view was confirmed when the Ombudsman's determination was subsequently over-turned by the High Court which said that there was no requirement to consider whether the person seeking to transfer has any earnings from the receiving scheme employer. The law requires the individual to be an earner, but the source of the earnings is not specified. The broader impact of this ruling means that, under current legislation, trustees and managers who, through due diligence, discover that a person seeking to transfer is not receiving earnings from a receiving scheme employer, cannot rely solely on the absence of such earnings to refuse the transfer. It has been argued, for example, by the pensions industry and regulators, that the absence of such an earnings link is a factor which may indicate a fraudulent scheme.

While the government recognises that many statutory transfer requests will be in relation to a legitimate receiving scheme, the government is also aware, through the work of Project Bloom⁹ and other stakeholder engagement, that some are not. The government is regularly informed by firms and schemes that they are frustrated and concerned because they feel current legislation gives them little scope to refuse a transfer to a scheme which displays the characteristics of a scam, despite their legitimate concerns as to the safety of members' savings.

4.2 The proposal

With the pension freedoms approaching their second anniversary in April 2017, and in light of the clarity given by the High Court on the current legal position in relation to the earnings situation of persons seeking a transfer, the government believes that now is the right time to consider whether it is necessary and proportionate to create new legislative restrictions to limit the statutory right to transfer to another occupational pension scheme.

4.3 Statutory transfers

The government believes it is right that members of pension schemes should continue to have the right to transfer, but that it may be necessary to limit that right in certain circumstances in order to protect individuals' savings.

Under this proposal, a statutory right to a transfer would exist only where:

- the receiving scheme is a personal pension scheme operated by an FCA authorised firm or entity
- a genuine employment link to the receiving occupational pension scheme could be demonstrated, with evidence of regular earnings from that employment and confirmation that the employer has agreed to participate in the receiving scheme; or
- the receiving occupational pension scheme was an authorised master trust

This approach would mean that the vast majority of transfer requests would continue to be agreed by trustees or managers. It would also allow transfers into authorised master trusts.

The statutory right to transfer to a personal pension scheme including a Group Personal Pension or SIPP (i.e. an FCA regulated firm) from an occupational pension scheme or other personal pension scheme governed by s.95(2)(b), s.95(2A)(b) or s.95(3)(b) of the Pension Schemes Act 1993 would be retained and would reflect any new restrictions.

In summary, subject to the above conditions, it will still be possible to transfer from an occupational pension scheme or personal pension scheme to a different occupational pension or personal pension scheme.

Question 4.1

Do you agree with the proposal to limit the statutory right to transfer in this way, or should this be further limited? If so, in what way and why?

Question 4.2

Would a requirement to evidence a regular earnings link act as a major deterrent to prevent fraud? How could the requirements be circumvented?

Question 4.3

How might an earnings and employment link be implemented? Should the onus be on the scheme member to provide proof of earnings?

Question 4.4

What would be the impact and cost to trustees / managers / firms?

4.4 Non-statutory transfers

If changes to limit individuals' statutory right to transfer were to be introduced, a member would no longer have the right to transfer in all circumstances. Transfers would, however, still be permitted at the trustees' or managers' discretion (in accordance with the scheme rules). The government would expect trustees or managers to make all reasonable efforts to agree a transfer request if there was no reason not to do so (i.e. if the receiving scheme did not appear to be a scam).

Question 4.5

Under the proposals, how would the process for 'non-statutory' transfers change for trustees or managers? What would they need to do differently from the current situation?

4.5 Alternative approaches

The government recognises that providing trustees and managers with the greater scope to block transfers, even if they believe it is a fraudulent scheme, is a challenging proposition.

An alternative to limiting individuals' statutory right to transfer could be to require 'insistent' scheme members (who wish to continue with the transfer, despite being warned of the risks) to sign a declaration similar to the example "discharge letter" in the Industry code of practice on combating pension scams. This letter could confirm that the member had understood the scam warnings given to them, and the nature of the risks that they may be exposed to. This letter could also be used to limit any recourse the individual has to the ceding scheme, in the event that the receiving scheme is a scam. The government would welcome views on whether this is a suitable alternative to limiting individuals' statutory right to transfer, and in particular if it could be implemented in a way that would not reduce the requirement on trustees to undertake due diligence on receiving schemes.

Such an approach could be coupled with a statutory cooling off period, whereby the ceding scheme would delay all transfers, for example by 14 days, to allow the member to reconsider their decision to transfer. The government would welcome views and evidence on the effectiveness of cooling-off periods as a means of combating scams.

Question 4.6

What are the pros and cons of introducing a statutory discharge form for insistent clients? How effective would this be as a means of combating scams?

Question 4.7

How could it be ensured that a statutory discharge of responsibility did not reduce the requirement on firms and trustees to undertake due diligence?

Question 4.8

What are your views on a 'cooling-off period' for pension transfers? Do you have any evidence of how this could help to combat pension scams?

4.6 Implementation

The government recognises that these proposals come with implementation challenges. For example, a regular earnings link could prove difficult to demonstrate in some legitimate circumstances, such as:

- self-employed individuals who were previously employed and who may wish to consolidate their previous pots by transferring into another scheme; for example, a decumulation only occupational pension scheme
- zero-hours contract workers who may not receive and demonstrate regular earnings

The proposal to demonstrate a scheme member's regular earnings may also place additional burden on the participating employer if they are required to evidence this, rather than the onus being on the scheme member. However, this has to be balanced with the need to prevent fraudulent activity.

The government recognises that these proposals would need to be carefully balanced with ensuring that trustees or managers are not refusing transfers in order to retain pension pots, to the benefit of the scheme and to the detriment of members; and will consider whether it might be appropriate to provide some form of statutory discharge for trustees in such circumstances.

Question 4.9

What additional measures or safeguards could be put in place to ensure that trustees or managers appropriately handle transfers that do not meet the new proposed statutory requirements?

Question 4.10

Are there other potential risks that this proposal might present? Do you have any suggestions as to how these risks might be mitigated?

5. Making it harder to open fraudulent schemes

5.1 The issue

Pension schemes wanting to benefit from the generous tax reliefs available must register with HMRC for tax purposes. Registration with HMRC is only relevant for tax purposes and does not imply that a tax-registered scheme is in any way regulated. However, evidence from correspondence and media stories suggest that individuals see registration as implying that a scheme is somehow 'approved' and is evidence therefore that the investments made by that scheme will be appropriately regulated. Many scams will also prominently display that they are 'HMRC registered' in order to give them an air of legitimacy.

This is particularly an issue in relation to Small Self-Administered Schemes (SSASs). There is a widespread perception in the pensions industry that the removal of the requirement for a professional trustee, known as a pensioner trustee, led to a significant increase in pension scams using such vehicles. This is because there is no requirement for single-member occupational pension schemes to be registered with the Pensions Regulator (TPR), and such schemes can be used even when there appears to be no business activity by the employer setting up the scheme.

At present there are around 800,000 registered pension schemes in the UK, the vast majority of which are single member schemes. TPR's view is that SSASs are increasingly marketed as 'products' offering exotic investments and unrealistic returns, and there is evidence that some consumers have lost their pension savings as a result.

Although a number of changes have been made to the tax registration process to tackle the threat of pension liberation (including moving away from automatic acceptance of an application to register to a risk based approach which includes more up front checks), the government wants to explore whether there is more that could be done to make it harder for schemes to be opened for fraudulent purposes.

More widely, the lack of regulation around SSASs, and more recent market changes have led some commentators to question whether the government should consider reintroducing pensioner trustees for SSASs; or their continued usefulness as a pension savings vehicle. This is in the context of more recent developments in the market such as master trusts (including National Employment Savings Trust (NEST) which reduces the need for small employers to set up their own schemes; and the ability for individuals (including the self-employed) to direct investments through self-invested personal pensions (SIPPs).

This chapter considers immediate changes to make it harder to open fraudulent pension schemes, and longer term options that could make it harder to abuse small schemes as a means of committing pension fraud.

5.2 The proposal

One way to make it harder for pension schemes to be registered with HMRC for fraudulent purposes, would be to ensure that only active (i.e. non-dormant) companies can be used for scheme registrations.

A dormant company is one that has been registered with Companies House but is not carrying on any kind of business activity or receiving any form of income, such that HMRC considers it dormant (or inactive) for corporation tax purposes. It can be dormant from the date of its incorporation, or it can become dormant after a period of inactivity. There are many reasons why a company may be dormant, such as:

- to reserve a company name whilst preparing to launch the business
- restructuring a previously active business, or
- where an owner requires an extended period of time off due to illness, maternity leave, travel, a sabbatical, or any other reason

However, there appear to be few legitimate circumstances in which a dormant company might wish to register a new pension scheme. It is difficult to envisage a scenario where that company carries out no trading activity, yet still wishes to open a new pension scheme for legitimate purposes. The government therefore proposes to change the law to require all new pension scheme registrations to be made through an active company.

Question 5.1

Do you agree that new pension scheme registrations should be required to be made through an active company? If no, what are the legitimate circumstances in which a dormant company might want to register a new pension scheme?

5.3 Enforcement

Enforcement of this measure could take place through HMRC's scheme registration process, by not allowing dormant companies to register for occupational pension schemes.

5.4 Wider action to limit pension scams through small self-administered schemes

SSASs exist in order to give small businesses a way to provide cost-effective pensions for their employees. However, very small schemes – particularly those with single members – can be open to abuse because the only person party to all the decisions is the person being scammed. These scams work by convincing people to set up a SSAS in order to allow a member to "access investments they couldn't get otherwise" or to "take a

personal loan from their pension". They often include charging extortionate fees – as high as 20%, and often not disclosed initially – and unregulated investments such as overseas property or natural resources. They can also lead to tax charges of up to 55% on the individual concerned.

The government would welcome views on whether additional steps should be taken to regulate such schemes or what further restrictions could be placed on the opening of new small schemes, in order to limit pension scams.

Question 5.2

Are there any further actions that the government should consider to prevent SSAs being used as vehicles for pension scams?

6. Consultation questions

6.1 Chapter 2 Common pension scams

- Question 2.1 Does the definition in 2.1 above capture the key areas of consumer detriment caused by pension scam activity?
- Question 2.2 Are there any other factors that should be considered as signs of a scam?

6.2 Chapter 3 Banning cold calling in relation to pensions

- Question 3.1 In your experience, how are consumers affected by cold calling about pensions? Do any consumers benefit from cold calling about pensions?
- Question 3.2 Do you agree that the scope of the ban should include the actions set out in paragraph 3.5 above? Are there any other activities that should fall within the scope of the proposed ban on pensions cold calling?
- Question 3.3 Do you agree that existing client relationships and express requests should be excluded from the proposed ban?
- Question 3.4 What would the costs and benefits be of extending the proposed ban to include all electronic communications?
- Question 3.5 How can the government best maintain the clarity of existing PECR concepts in light of the proposed ban on pensions cold calling?
- Question 3.6 How can the government best ensure consumers are aware of the ban?
- Question 3.7 Do you have any views on enforcement mechanism set out in paragraph 3.10 above?
- Question 3.8 Is there any reason why legitimate firms' business models should be affected as a result of the ban?
- Question 3.9 Do you have any other views or information the government should consider in relation to the proposed ban on cold calling in relation to pensions?

6.3 Chapter 4 Limiting the statutory right to transfer

- Question 4.1 Do you agree with the proposal to limit the statutory right to transfer in this way, or should this be further limited? If so, in what way and why?
- Question 4.2 Would a requirement to evidence a regular earnings link act as a major deterrent to prevent fraud? How could the requirements be circumvented?
- Question 4.3 How might an earnings and employment link be implemented? Should the onus be on the scheme member to provide proof of earnings?
- Question 4.4 What would be the impact and cost to trustees / managers / firms?

- Question 4.5 Under the proposals, how would the process for 'non-statutory' transfers change for trustees or managers? What would they need to do differently from the current situation?
- Question 4.6 What are the pros and cons of introducing a statutory discharge form for insistent clients? How effective would this be as a means of combatting scams?
- Question 4.7 How could it be ensured that a statutory discharge of responsibility did not reduce the requirement on firms and trustees to undertake due diligence?
- Question 4.8 What are your views on a 'cooling-off period' for pension transfers? Do you have any evidence of how this could help to combat pension scams?
- Question 4.9 What additional measures or safeguards could be put in place to ensure that trustees or managers appropriately handle transfers that do not meet the new proposed statutory requirements?
- Question 4.10 Are there other potential risks that this proposal might present? Do you have any suggestions as to how these risks might be mitigated?

6.4 Chapter 5 Making it harder to open fraudulent schemes

- Question 5.1 Do you agree that new pension scheme registrations should be required to be made through an active company? If no, what are the legitimate circumstances in which a dormant company might want to register a new pension scheme?
- Question 5.2 Are there any further actions that the government should consider to prevent SSASs being used as vehicles for pension scams?

7. Consultation principles

This consultation is being run in accordance with the government's consultation principles. The government will be consulting for 10 weeks.

7.1 Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department. The department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

1. Research conducted by Opinium for the Money Advice Service in October 2015 amongst 2014 nationally representative UK adults aged 18+ (<https://www.moneyadviceservice.org.uk/en/corporate/eight-scam-calls-now-take-place-every-second>) ↩
2. Citizens Advice Research, Too good to be true?, March 2016 (<https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/Too%20good%20to%20be%20true%20-%20Understanding%20consumer%20experience%20of%20pension%20scams%20a%20year%20on%20from%20pension%20freedoms.pdf>) ↩
3. source: Xafinity pensions consulting (http://www.xafinity.com/c_m_s/posts/view/Xafinity-

[Consulting/2016/05/25/Possible_scams_in_11_of_pension_transfer_cases_finds_Xafinity](#) ↗

4. In 2013, 97% of cases brought to Citizens Advice involving pension liberation stemmed from cold calling (<https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/financial-services-should-be-banned-from-cold-calling/>) ↗
5. Citizens Advice analysed 1,845 calls made to the consumer service between 1 January to 28 February 2013 (<https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/financial-services-should-be-banned-from-cold-calling/>) ↗
6. Age UK, Evidence Review 'Only the tip of the iceberg: fraud against older people', April 2015 (<http://www.ageuk.org.uk/documents/en-gb/for-professionals/consumer-issues/age%20uk%20only%20the%20tip%20of%20the%20iceberg%20april%202015.pdf?dtrk=true>) ↗
7. Part 4ZA Pension Schemes Act 1993 (<http://www.legislation.gov.uk/ukpga/2015/8/schedule/4/enacted>) ↗
8. [Hughes v The Royal London Mutual Insurance Society Limited [2016] EWHC 319 (Ch)] (<https://adviser.royallondon.com/news/pensions/2016/march/hughes-v-royal-london/>) ↗
9. Project Bloom is a cross-government task force comprising of government, regulators and agencies formed in 2012 to tackle the problem of pension scams through (<http://www.thepensionsregulator.gov.uk/press/pn16-31.aspx>) ↗

