The Pensions Regulator

Pension scams: consultation response

Executive Summary

We welcome the proposals outlined in the consultation. Measures to restrict the ability of scammers to attract new victims are overdue. However, we believe the proposals could, and should, go further.

A ban on cold-calling about pensions is a simple measure that is easily understood by those it seeks to protect. It sends a simple direct message that any cold calls about pensions are a scam. We would go further. A broad-based ban reduces the risk of confusion among the general public by further simplifying an already simple message. We would therefore suggest that the ban on cold-calling is extended to cover all financial products. It is our strong belief that there is no legitimate reason for any financial services company, or their agents, to cold-call potential customers.

While many approaches by scammers are made by telephone, a great many come via text message or email. As with cold-calling, we can see little justification to continue to allow unsolicited email traffic in relation to pensions.

We acknowledge the difficulty in enforcing any ban against cold-calls and email traffic originating from outside the UK. This is why clear public messaging on the subject is critical. A statement that any unsolicited contact in relation to your pension, mortgage, or other financial product will be a scam is invaluable in fighting scams.

We agree that the statutory right to transfer needs to be restricted to provide trustees with the ability to block transfers they consider to be dubious. However, this restriction, while an improvement over the current situation, risks placing a substantial burden on trustees of ceding schemes. Proving an employment link exists is a complicated and time consuming process, and may prove problematic for certain workers. Our proposal would be to restrict the statutory transfer right to situations where the receiving scheme is either an authorised master trust or FCA regulated scheme. Such an action would chime with developments in the wider marketplace where such schemes now hold the majority of active members.

Action is needed to restrict the schemes typically used by scammers - SSASs. Where these schemes have two or more members, they are subject to light touch regulation that reflects their original role in succession planning and small business finance. However, the pension landscape has changed substantially since their conception. It is particularly worrying that at least 760,000 single member SSASs can exist and operate outside any regulatory influence. We therefore believe all future transfer payments to SSASs, and establishment of any new SSAS, should be banned. It should also be considered how these single member schemes can be regulated.

We also believe that measures should be introduced to severely restrict any transfer to a Recognised Overseas Pension Scheme (ROPS). These vehicles are favoured, along with SSASs, as a receiving scheme. We recognise that ROPS have historically had a role in ensuring savers retiring overseas had easy access to pensions accrued in the UK. However, the world is now more connected than ever and the UK pension system is more flexible at retirement. These factors persuade us that a case for blocking the majority of overseas transfers can be made. Pensions earned in the UK, and benefitting from UK tax relief, can justifiably be restricted to being drawn in the UK, even if the net income is then transferred overseas.

Consultation questions

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?

The detriment to the consumer is typically the complete loss of any pension savings transferred to a scam scheme. Victims can then also find themselves subject to penalty demands from HMRC for breaches of tax legislation. The emotional and financial impacts of such activity can scar the victims for life.

Question 2.2: Are there any other factors that should be considered as signs of a scam?

A key deliverable required of Project Bloom has been to define ‘pension scam’, including identifying what distinguishes a pension scam from a traditional investment scam.

The definition reached, which was always intended for abbreviation where needed, is a longer and slightly more detailed version of the list presented in the consultation. It is the basis on which the Project Bloom group will begin publishing scam statistics from spring this year.

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?

TPR has interviewed scam victims as part of its ongoing work to raise awareness of pension scams. This is being used to inform and provide content for our current awareness campaign. The evidence gathered from these interviews shows that the effects of being scammed do not go away. Interviewees have reported repeated instances of regret, anger and loss. These can be triggered by something as trivial as the arrival of a letter or the phone ringing.

It is our firm belief that there is no legitimate reason for an individual to be cold-called about their pension. The strong evidence is that the losses suffered by those who fall prey to scam activity from cold calls far outweighs any possible benefits that could be derived from legitimate firms making cold calls.

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?

We believe the list presented in the consultation represents the routes that cold-callers use. However, scams develop rapidly and can quickly exploit any loophole or opportunity discovered. It is obvious that the list above should not be considered immutable. Rather, it needs to be able to rapidly adapt to changing models.

It is possible that the message about the proposed ban on cold-calling on pensions has had some success, with scammers having to switch tactics. Scammers may already be transitioning to other means of recruiting victims. Further protection from scams can be achieved if a ban on cold-calling covered any form of financial planning or financial services. This would build on the existing ban on cold-calling in respect of mortgages introduced in 2006. Simplifying the message to consumers in this way would reduce not only pension scams, but also those relating to banking, insurance and other financial services.

Question 3.3: Do you agree that existing client relationships and express requests should be excluded from the proposed ban?

It is often the case that individuals search the web for pension or financial advice. As a result, some will stumble upon sites set up by scammers. These sites will require the potential victim to complete their details to receive a call back. In this way, an 'existing relationship' can be established. However, legitimate businesses also use websites to advertise, and are indistinguishable to the layman from scammers' sites. Similarly, warm calls may be a feature of an adviser's relationship with their client. We see no reason why these should be prevented by any ban. An exclusion from the ban for existing client relationships and express requests, although posing problems, is necessary. It will be for advisers to establish a protocol that allows their clients to be sure they are not being scammed by someone posing as their adviser. The FCA has reminded firms about their responsibility in ensuring that assets held in SIPPs in particular are legitimate and not scams.

Question 3.4: What would the costs and benefits be of extending the proposed ban to include all electronic communications?

In principle we support a ban on unsolicited text and email messages. These forms of messaging pose the same, and potentially a more immediate, risk than a cold call. This is particularly the case where pension transfer instructions could be completed online. However, we accept that in practical terms the effectiveness of any ban could be limited because the source of much of this material is likely to be overseas. This is another reason for extending a ban on unsolicited financial promotions to all financial products. Doing so will make consumers naturally more suspicious of such contacts.

Question 3.5: How can the government best maintain the clarity of existing PECR 2003 concepts in light of the proposed ban on pensions cold calling?

As noted above, the simplest message would be one which stated that any cold calls in relation to financial services should be treated as a scam.

Question 3.6: How can the government best ensure consumers are aware of the ban?

A key part of the success of any ban will be the alignment of messages from the various agencies involved in scams prevention, including TPAS, CAB and the FCA. This might include exploring whether TPR's scorpion might be used in all scams communications. Another option is for all communications material produced by those in the Project Bloom group to be joint communications and badged as such. This would help to avoid slightly differing messages being promulgated by the different agencies, which risks confusing consumers.

Furthermore, it is important that any ban can be communicated in a clear and simple way. An example of this would be the headlines proclaiming a ban on pensions cold-calling, which accompanied the start of this consultation but preceded any legislative activity by many months. An important feature of the development of legislation arising from this consultation will be regular socialising of the key message about scams at all suitable moments.

Question 3.7: Do you have any views on enforcement mechanism set out in paragraph 3.10 above?

The ICO is in a better position to take action against cold-callers and such action is already within their remit. For example, the sums they are able to fine offenders are greater than the penalties available to TPR and can be issued in a more straightforward fashion.

Question 3.8: Is there any reason why legitimate firms' business models should be affected as a result of the ban?

We are unaware of any legitimate firms whose business would be affected by any ban on cold-calling, whether this was in respect of pensions or all financial services.

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?

The Project Bloom group will soon be producing statistics on scams reported to the group partners. These will, for the first time, provide a consistent baseline for measurement of pension scam activity. We trust that the introduction of a ban on cold-calling will have an immediate and clear effect on the number of scams being reported. As familiarity with the ban and the need to report such activity grows, we anticipate a short-term growth in scam reports.

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?

Figures published in TPR's 2017 DC Trust report on DC pension membership shows that 86% of all active pension savers in the private sector are now in DC schemes. The majority of these members are in either master trusts or schemes regulated by the FCA. Restricting the statutory right to transfer to these schemes (authorised master trusts, GPPs and SIPPs) would be simple and effective. This would further reinforce a shift in the market towards such pension provision and may encourage the consolidation of pots and provision within a few providers. Consideration should also be given to allowing transfers to proceed on a statutory basis to public sector schemes. These are the other group of schemes which have a significant membership.

Proving the existence of an earnings link may be difficult for trustees, particularly those who are poorly resourced. Such matters are also likely to be most relevant where transfers are proposed to small pension schemes. Larger occupational pension schemes are far more likely to be able to prove their bona fides. We do not anticipate many situations in which a request for a transfer to a large scheme not falling into the statutory definition would not proceed on a discretionary basis.

Any transfer outside the statutory right would be at the discretion of the trustees. Some thought may need to be given to the extent to which a statutory discharge could be available. The lack of discretion to refuse a transfer came about because trustees were refusing to transfer for inappropriate reasons, and where it was felt that those trustees were merely prioritising holding onto pension pots. The drafting of legislation to implement the above proposal would need to be carefully worded to account for this original concern. This would help avoid the possibility of scammers or unscrupulous trustees exploiting new rules that empower them to refuse to transfer out to their own benefit to the detriment of members.

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?

Given the availability of SIPPs and some master trusts (including NEST) to the self employed, and those on zero-hour contracts, we do not see that any statutory entitlement to transfer needs to arise from an earnings link.

In TPR's experience, pension arrangements that appear likely to be scams are typically designed purely to accept transfers. It is not uncommon for scam schemes to provide copies of employment contracts between a scheme employer and a member, but these contracts are typically framed as a casual or zero-hours contracts. It would be more difficult, and less attractive, for scam schemes to provide evidence of a regular earnings pattern from an employment.

TPR has encountered only one legitimate scheme where no earnings link between the scheme and its members is present. This scheme is a decumulation-only vehicle, and the DWP has indicated that such schemes will be brought within the master trust authorisation regime in due course.

Because of the existence of large numbers of self-employed and zero-hour workers it would be difficult to suggest a minimum level of earnings for a 'link' to exist. For many savers, payments where a genuine earnings link does exist may be irregular because of the nature of their earnings. It is consequently likely that any position on the definition of an earnings link would be quickly challenged. While any action taken to exploit a loophole would increase the likelihood that a member is complicit in being scammed, this does not mean they are undeserving of protection from their own actions.

For a self-employed individual to demonstrate regular earnings in relation to the new scheme, particularly for those who do not pay themselves a regular salary, there will be no 'employer' as such. This lack of employer is also a common feature of scams. Similarly, it is possible that individuals on zero-hours contracts may struggle to demonstrate regular earnings from an employer participating in the scheme to which they wish to transfer. However, we would expect such workers in both groups to be joining authorised master trusts or FCA regulated pension arrangements.

In any event, trustees of a ceding scheme would still be able to execute a transfer at their discretion, but the onus would be on the individual to show that the arrangement to which they wish to transfer is genuine, and there is no legitimate reason for refusing the transfer.

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?

As noted above, we believe a statutory right to transfer arising from a demonstrable earnings link is unnecessary. The levels of proof required, and the legitimacy of the evidence provided, are likely to be applied inconsistently by trustees. In some cases, the trustees of a receiving scheme may be able to provide some evidence of earnings, through regular contributions. But in others, such as for low or irregularly paid individuals, such evidence may be necessarily drawn from the individual themselves, or from a payroll department. Questions have been raised as to whether the amount of information required to demonstrate an earnings link would breach personal data laws. A requirement to provide extensive personal financial records would undoubtedly reduce the number of transfers proceeding beyond an initial request.

The effect of such evidence gathering would be to increase the processing cost and time to complete such transfers. Our preference would be for the earnings link only to be considered as part of trustees' due diligence prior to a non-statutory transfer. Given the dramatic shifts in workplace pension provision over recent years, a statutory right to transfer arising from an earnings link is an unnecessary complication.

Question 4.4: What would be the impact and cost to trustees / managers / firms?

We anticipate a growing trend for the majority of transfers to be within the group of authorised master trusts and FCA regulated providers. The supervision of these schemes and providers should enable trustees to accept lower levels of due diligence on any transfer to or between members of this group. This would substantially reduce the costs of due diligence from present levels in the majority of cases.

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?

As mentioned previously, restricting the statutory right to transfer to only authorised master trusts, FCA regulated and public sector schemes reflects the shift in the wider marketplace. We anticipate that the balance of legitimate transfer requests will increasingly shift towards these three groups. Many of the schemes in these groups are already members of electronic transfer services such as Origo's Options. By making use of such systems, transfers can be processed more rapidly.

The group of schemes covered by our proposed statutory transfer right are, mostly, those likely to be early adopters of the proposed pension dashboard. Consolidation into this group of schemes is therefore likely to provide increased benefit to savers through improved transparency.

We acknowledge however that some non-statutory transfers will still take place. In these situations a ceding scheme will be able to carry out whatever due diligence it sees fit before proceeding with a transfer. Where a receiving scheme is large, associated with a well-known employer, or has been previously reviewed by a scheme, we would expect transfers to proceed much as they do at the moment.

However, the situation may change where the receiving scheme is small or unknown to the ceding trustees. Under these situations the ceding trustees refuse the transfer. We would not want to see this as an automatic response. A refusal should only occur in reaction to a request that they consider to be dubious. In most cases we would expect trustees to permit transfers and perform an appropriate level of due diligence, which could include an assessment of whether a genuine earnings link exists.

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?

There is a risk that any statutory discharge becomes a standard part of all transfer documentation for scammers, where it would be another form that a victim signed without realising it.

To help prevent this situation, we would want to see a statutory discharge form presented in a way that it could not form part of standard transfer documentation. This would also require a discharge form to be tailored to the specific circumstances of the transfer. In this respect, forms that presented the specific concerns of the ceding scheme would be useful in raising the awareness of potential victims.

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?

While conceived as a last line of defence, it is inevitable that some ceding trustees would issue discharge forms in lieu of conducting any due diligence on a receiving scheme. It is almost inevitable that a statutory discharge would reduce the impetus to carry out the time-consuming and potentially expensive due diligence process ahead of each transfer.

Any option intended to require due diligence to be carried out before a discharge form was issued would be unwieldy and difficult to enforce in practice. There are however ways to address this. The use of a statutory discharge should be restricted to non-statutory transfers, and only used in cases where the ceding trustees have strong grounds for believing that a transfer is to a dubious scheme. Any form which required the trustees to state their concerns would discourage the automatic use of such a form.

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?

At a time when the Government is investigating ways to speed the transfer process up, it would seem counter-intuitive to introduce an automatic delay into all transfers.

There is some evidence that scam victims do have second thoughts at some point after completing their transfer forms. It is not wholly clear when this happens, but anecdotally may be linked to a failure to receive key documentation. A transferee may not be aware that they are missing anything for some time. Suspicions have not been raised in some recent cases until years have passed.

However, any pause would allow an opportunity for second thoughts and doubts to surface and may therefore be useful. It would be interesting to see if there is any evidence of the effectiveness, or take-up, of such cooling-off periods where they are in place elsewhere.

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?

If a statutory transfer can only be made in respect of authorised master trusts, FCA regulated and public service schemes, it seems reasonable to say a transfer must be made very quickly. A period of five to ten working days may be appropriate.

Where a non-statutory transfer was requested, the ceding trustees would need to explain to the member that there could be long delays in the process arising from the need to carry out due diligence on the receiving scheme. This messaging could serve a two-fold purpose. Firstly, it would make savers more aware of the risks of scams and, secondly, it would ensure that trustees made at least some effort towards completing the transfer. If a member thought the transfer should be made faster, 'limited time opportunities' often being a feature of a scam, then there could be a link to the statutory discharge form.

In processing a non-statutory transfer, the priority would be on demonstrating the legitimacy of the receiving scheme. At an individual level, a valid starting point, despite the points mentioned above, might still be for a demonstration of an earnings link to the receiving scheme. Whatever the outcome, we have no desire for a return to the days prior to the statutory right to transfer where trustees could block a transfer on a whim.

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?

Many in the industry have called for the creation of a transfer 'white-list' or 'walled-garden' wherein transfers can take place with relatively little scrutiny. We support these calls. However, the problems of creating and maintaining such a list are significant, particularly in a universe of 40,000 pension schemes. Instead, by restricting statutory transfers to authorised master trusts, public service schemes and FCA regulated schemes, a default white list is created. . The schemes in this group are subject to higher levels of scrutiny than the majority of their peers. Furthermore, publication and maintenance of any list of these schemes and providers would be straightforward, with TPR already carrying a requirement to publish a list of authorised master trusts.

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?

We would go further and require companies to demonstrate evidence that they are active before registering a pension scheme. Many scams operate through SSASs where the sponsoring employer is a newly created company established with the member as director. By requiring evidence of corporate activity the time taken to execute any scam, and therefore the chance of discovery, is very much increased.

A large proportion of suspected scam activity now relates to single member occupational pension schemes. These are attractive to scammers as they do not have to be registered with TPR, and are generally subject to more relaxed governance requirements. This is particularly true since the removal of the requirement for trustees in SSASs in 2006.

The basis on which these arrangements can be considered ‘occupational’ is in many cases doubtful. We see no reason why any small employer would wish to set up their own pension scheme, given the wide range of master trusts and FCA regulated providers available to them. For legitimate businesses with only one employee (the self-employed for example) we consider that SIPPs are a more appropriate choice of savings vehicle. The SIPP market is competitive and keenly priced, even after action by FCA to improve the solvency of providers. By contrast, the fees charged by SSAS providers are, whilst made clear, often high.

Measures also need to be set in place to ensure that existing dormant SSASs are not able to be resurrected by scammers wishing to use an apparently legitimate scheme.

Question 5.2: Are there any further actions that the government should consider to prevent SSASs being used as vehicles for pension scams?

Many small businesses use small occupational schemes, often still referred to as SSASs, for perfectly legitimate tax and succession planning purposes. TPR does not believe they are inherently a bad pension saving vehicle, but their original purpose has been diluted by subsequent legislation.

The lighter legislative and regulatory framework means that SSASs are a vehicle of choice for scammers. The consultation paper itself identifies the existence of over 760,000 occupational pension schemes that operate without any practical regulation. We believe a large proportion of these schemes will be scams. SSASs are increasingly marketed by scammers as ‘products’ offering esoteric investments and unrealistic returns. In legitimate cases, the primary reason given for taking out a SSAS is for the loan facility in these vehicles. Property purchase is a frequently used illustration for this feature. In TPR’s view it is unacceptable for any pension scheme to be so readily subject to mis-selling and abuse.

The use of a SSAS as the receiving scheme for a transfer is, rightly, likely to raise suspicions with scheme administrators. Because such arrangements are generally used by self-employed individuals (or those purporting to be self-employed), a clear regular earnings link typically cannot be established.

A simple solution would be to place a ban on future transfers in to SSAS arrangements. This would still allow existing schemes to be used as tax planning vehicles for small businesses (ie the use for which they were traditionally envisaged), but would take away their future use as scam vehicles.

A more extreme solution would be to impose a total ban on all existing SSASs. This would cause significant disruption to those schemes which are already in existence and are being used for their original and legitimate purpose. A total ban on SSASs would still leave SIPPs available to individuals as an option for tax planning and succession purposes. The ability of SIPPs to absorb all of the assets currently held in (legitimate) SSASs is remote due to the esoteric and indivisible nature of some investments. This fact alone persuades us that an immediate outright ban may be undesirable.

One outcome from a ban, or increased scrutiny of SSASs would be that it would cast a light on the number of scams, and the degree of mis-selling that is already present in these schemes. Such an outcome would require careful handling of consumers and the media as it would represent another ‘knock’ to the pensions brand.

We agree with some industry commentators that the resurrection of a requirement for trustees would reduce the risk of the abuse of SSASs. We are not opposed to that as a potential solution. However, for trustees to truly mitigate the risk of small schemes being used as scam vehicles, careful thought would need to be given to the approval and regulatory supervision of those trustees. The capacity and funding of a suitable regulatory body to take on that task would also require consideration. In contrast with other proposals the imposition of pensioner trustees, on very nearly 800,000 schemes, would significantly increase costs on schemes and stretch the ability of the market to respond.

Another approach may be to consider SSASs as a type of master trust, since many will share the same provider, administrator, rules and other features. The current Pension Schemes Bill contains a measure enabling regulations to treat groups of schemes sharing common features as a single scheme. Taking this approach with SSASs, particularly single member SSASs, may enable many of the schemes to be regulated efficiently at a provider level. It is possible that a number of such ‘clusters’ would be unable to demonstrate the appropriate compliance with the authorisation criteria and would therefore be wound-up or transferred to other regulated arrangements.