13 February 2016

ABI Response to Treasury Pension scams consultation

About the ABI

The Association of British Insurers (ABI) is the leading trade association for insurers and providers of long-term savings. Our 250 members include most household names and specialist providers who contribute £12bn in taxes and manage investments of £1.6 trillion.

Executive Summary

The ABI is supportive of the proposals outlined in the consultation. They are a positive step towards combating pension scams.

New forms of pension scam are continually emerging and following the pension freedoms, a range of new types of scam have been developed. Many of these scams use cold calling to contact customers and the proposed ban would therefore have a positive outcome. The degree of success the ban achieves will be largely dependent on public awareness and it is vital that people are aware that cold calls on pension will be illegal and to report them accordingly. Limiting the statutory right to transfer and making it more difficult to open fraudulent schemes will further assist with preventing pension scams.

We do not believe that the proposed changes will impact on legitimate businesses nor will they place overly burdensome requirements on scheme trustees, managers or firms.

Further, given that the proposed changes are likely to require primary legislation we realise there will be a significant amount of time between now and when the proposals come into force. This does create a risk that there is, for want of a better word, a 'rush' of scams trying to take advantage of the current system. To mitigate this risk we advocate a moratorium preventing any transfers that arise from cold calls once the Government has responded to the consultation. This would be achieved by updating the industry code of good practice and would ensure adequate consumer protection is in place for customers who are susceptible to scams until the proposals come into effect.

Response to HM Treasury Questions

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

The definition in 2.1 captures the key areas and types of pension scams which lead to consumer detriment. However, we would suggest providing further clarity to the definition by also setting out what would constitute an 'inappropriate investment'. The list of Standard Assets in Table 5.2.3(4)(a) of the Interim Prudential Sourcebook for Investment Business could provide a starting point for this definition with the inclusion of insured funds.

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

Offering to 'trace lost pensions' or provide a 'free pension review' are often further signs of a scam.

Question 3.1: In your experience, how are consumers affected by cold calling about pensions? Do any consumers benefit from cold calling about pensions?

Considering the exclusions outlined in paragraph 3.6, we do not envisage that any customer would benefit from cold calling on pensions. It is important that the ban does not affect firms' ability to contact potential beneficiaries, for example in the case of death claims.

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 agree that the ban should include all actions set out in paragraph 3.5.

We would support a further extension of the ban to all forms of investment across all forms of digital communication, not coming from an FCA regulated entity, in a similar way to the Financial Promotions rules. This is essential to prevent the ban being circumvented and fraudsters adopting other means of communication.

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

We agree with this proposal.

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

We support this proposal and believe it will be essential to effectively tackle pension scams. It is difficult to calculate the cost of this proposal but our members do not envisage it being

significant. Any additional cost would likely relate to the additional enforcement activity required by the Information Commissioners Office in order to make the ban successful.

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?

No comment.

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

Communicating the ban will be integral to its success. We support using the channels outlined in paragraph 3.9 to publicise the ban.

The Treasury and Department for Work and Pensions are currently consulting on creation of a Single Financial Guidance Body (SFGB). It is proposed that the new body will have a focus on scams and fraud as part of its remit. We would support the SFGB, once it is established, playing a key role in making consumers aware of the ban as part of its wider remit of providing information and awareness to consumers about fraud and scams.

Given that the SFGB will not be created until after Autumn 2018, we would encourage a high profile media campaign being created in the interim. To have the greatest impact, it is vital that this campaign and other measures used to publicise the ban have consistent messaging. We therefore call for a joined up approach across public financial guidance providers and government to promote the ban. Insurers already raise customer awareness by using the Pensions Regulator's materials and signposting to guidance services, and will continue to play their part in raising awareness.

A disproportionate number of pension scams affect vulnerable customers, who do not have access to financial advice or struggle to understand financial products. We therefore advocate that the campaign to promote the ban focuses on non-advised customers.

Furthermore the campaign should encourage customers to report any pensions cold calls or pension fraud that they have experienced. This would make enforcement against fraudulent schemes more likely and raise awareness of the risk of being targeted by a pensions scam.

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

We agree with the enforcement mechanism.

We would also support any measure that encourages consumers to report cold calling as outlined in our response to question 3.6.

One of our primary concerns is that fraudsters may simply move their operations overseas to circumvent the ban. Paragraph 3.5 states that 'the government does not have the powers to take action against firms making calls from overseas'. We recommend that such calls are considered as 'arranging a deal in an investment' and, consequently, these calls should require appropriate permission unless the introduction is not to a regulated adviser. If the introduction is to a UK regulated adviser then the FCA will be able to intervene.

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

We cannot see any reason for these proposals to affect legitimate firms. It is important that the ban does not affect firms' ability to contact potential beneficiaries, for example in the case of death claims.

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?

We would encourage an approach to fraud and scams that is developed across government rather than in isolation between multiple departments. A coordinated approach to addressing consumer fraud will be far more effective in removing potential avenues for fraud and better protect consumers. Project Bloom appears to have effectively brought agencies together, but other than its existence, its activity is not readily visible to the industry – re-establishing wider collaboration and information sharing with industry bodies would be welcome. The SFGB, once established, will have an important role to play in this area.

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?

We support the proposal to limit the statutory right to transfer and in particular, the requirement to establish a genuine employment link.

We would also propose the following additional measures:

- A requirement that evidence is supplied to demonstrate that the employer is genuinely the scheme employer and has not been described as participating without their knowledge.
- Legislative change to make a statutory right to transfer only exist where the receiving scheme is named on a register maintained by TPR (occupational schemes) or HMRC (personal schemes and QROPS), with more stringent requirements such as fitness

and propriety tests of the trustees or managers of the schemes. This may be a longer term aim and to be practical is likely to require some schemes to merge or close, but this should support other policy objectives.

- Extension of the definition of master trust to include schemes set up by an employer, but which accepts transfers from individuals with no association with that employer. This would close the "earnings link" gap which is closed by the proposal to evidence earnings for non-master trust schemes.
- Under the Institutions for Occupational Retirement Provision (IORPs) investment rules there are various exemptions for schemes with less than 100 members which leave members exposed to higher risk investments. Reducing the figure from 100 to 12 (consistent with the figure for SSASs) would increase the obligations of 12 to 99 member 'own trust' schemes and would increase protection for members.
- For PPS, the proposal should also be amended to reflect the fact that, in addition to the requirement that the PPS is registered, there is a separate requirement under the Financial Services & Markets Act 2000 and the regulated activities order for the PPS operator itself to have the appropriate permission. This would establish an explicit link between the product and the operator, which we do not believe to be a requirement at this moment in time.

We are aware that there may be concerns that limiting the statutory right to transfer could prevent some legitimate transfers from being made, stifling market competition. This concern should be addressed by ensuring that there is an adequate appeals process run by the Pensions Ombudsman.

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?

Yes, as outlined in our response to Question 4.1, the requirement to establish a genuine employment link is a positive measure.

However, there are ways for the requirements to be circumvented, for instance by the receiving scheme providing the customer with a series of small notional payments to demonstrate an earnings link. To avoid situations where this could occur we suggest that the evidence of earnings needs not only to be regular, but also substantial and that both these terms are clearly defined in guidance.

Additionally there may be genuine situations where an employee receives income from their employment in a form other than direct earnings, such as a Director of a Company receiving dividends. To ensure people in these legitimate situations still retain the statutory right to

transfer we suggest altering the description of the earnings link to read “evidence of regular and substantial earnings or dividends.”

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?

An appropriate way to implement an earning and employment link would be for the onus of proof to rest with scheme members, evidenced through certified copies of salary slip or P60 forms. This would be the most cost effective and sensible solution.

For self-employed or zero-hours contract workers there would need to be clear guidance on what constitutes a ‘regular earnings’ link. This guidance would need to consider the frequency and value of payments. The inherent risk of this of this approach is that it also provides information to fraudsters, however, if the approach is robust enough it should make a significant difference in reducing fraud.

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

There would be additional cost if the link was restored for both Trustees and Administrators. This would require firms to change transfer application and procedures and additional staff training to deal with customer enquiries. It is difficult to estimate the exact cost involved but our members have suggested that it would not be significant and should not be a barrier to implementation of the proposals.

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 outlined in paragraph 4.1 our preference would be to focus on changes which would provide a clear legal basis on which to transfer. However, where in the absence of a statutory right to transfer the member still has a contractual right to transfer, then a further statutory override may be necessary to prevent the transfer occurring.

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?

As outlined above, our preference is for a limit on the statutory right to transfer.

Should this proposal remain, then a statutory discharge would help reduce the risk of transferring for managers/trustees of the ceding scheme. However, in our member’s experience, insistent scheme members are unlikely to be deterred from going ahead: as many

members in such circumstances are prepared to sign such forms in order to obtain a transfer of their pension.

Furthermore, the industry has over the last decade eliminated the need for paper-based discharge forms by agreeing a common set of declarations and automated transfers through the Origo Options transfer service. Introducing a statutory discharge form would be damaging if use of this form became the norm.

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?

As outlined above, our preference is for a limit on the statutory right to transfer as this would provide far better protection for consumers. The risk with a statutory discharge form is that it would simply become another form for scammers to coerce a member into signing. However, in the event that this proposal remains it would seem preferable to undertake the appropriate due diligence to establish the veracity of a scheme. In particular, the reputational implications following an inappropriate transfer would far outweigh the costs of full 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?

Rather than a "cooling-off period", our preference (as outlined previously) would be for all transfers to be conferred by a statutory rather than a discretionary right, and to limit that right. In the experience of our members a cooling-off period does not have any effect on customers who wish to make a transfer.

Cancellation periods already exist for transfers into contract-based pensions. An alternative way of introducing a cooling off period would be to introduce cancellation periods for transfers into trust-based schemes.

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?

Please refer to our response to question 4.1.

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?

As a further point, it is our view that the harm caused by pension scams and the scale of the activity warrants custodial sentencing as a possible option alongside the maximum penalty of £500,000 outlined in the proposals.

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?

This seems an appropriate measure. Guidance on what constitutes an 'active company' will be required.

Furthermore we would support the following additional measures:

1. Single member pension schemes should be required to register with TPR.
2. Naming and shaming recognised pension scams.

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

The consultation suggests that SSAS pensioneer trustees should be reintroduced. We would support this measure. To prevent 'straw men' trustees being appointed by scammers we would encourage the creation of a TPR register of bona-fide pensioneer trustees. This would operate in the same way as the register of pensioneer trustees held by HMRC prior to 2006.

It is difficult to impose further restrictions without damaging legitimate schemes. We would recommend that regulated advice on the transfer should be required if the receiving scheme is a SSAS. This would require clear definition of a SSAS, which has not existed in the tax rules since 2006.