HM Treasury

Department for Work & Pensions

Pension scams:

consultation response

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ISBN 978-1-911375-83-8
PU2075

Contents

1 Introduction

1.1 For some people in the UK, their pension savings will be their largest financial asset, for which they will save over the course of their working lives in order to provide them with an income in retirement. However, because of the size of individual pension pots, and because people do not have to engage with their savings until later in life, pension savings can be an attractive target for fraudsters. Pension scams can cost people their life savings and leave them facing retirement with limited income, with little or no opportunity to build their pension savings back up.

1.2 The government takes the threat of pension scams very seriously. This is why the government launched a consultation in December 2016, looking at three potential interventions aimed at tackling different aspects of pension 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 pension schemes

1.3 This document sets out the government's response to the consultation, including next steps in each chapter of the consultation.

1.4 The government would like to thank all respondents for taking the time to respond to this consultation, and for sharing their views. A list of respondents can be found at Annex A.

Overview of responses

1.5 In total the consultation received 111 responses from pension firms, independent financial advisers, professional bodies, industry groups, regulators, consumer groups, and individual members of the public. The vast majority of respondents strongly supported the government's intervention in respect of pension scams, and welcomed the multi-pronged approach which tackles scammers' ability to open fraudulent schemes, to market fraudulent schemes and to receive transfers into fraudulent schemes.

1.6 A small number of respondents suggested the government should go further and that a tougher approach was needed to stop pension scams, particularly in respect of other electronic communications (as part of the cold calling ban); and further restrictions on pension transfers (to remove the right to transfer even where a demonstrable earnings link existed). A majority of responses also highlighted the potential role of independent ("pensioneer") trustees in improving the regulation of small self-administered schemes (SSASs). These points are considered in the relevant sections below (chapter 2 on banning cold calling in relation to pensions, chapter 3 on limiting the statutory right to transfer, and chapter 4 on making it harder to open fraudulent schemes).

Definition of a scam

1.7 Most respondents agreed with the broad approach to defining pension scams put forward by Project Bloom.[1] Respondents noted that the definition would be able to help trustees, providers and members spot the warning signs before making a costly mistake, as well as being

[1] Project Bloom is 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

able to help regulators and the legal system classify activity as a scam after the fact. It is also Project Bloom's intention to use the definition to help record robust information on the volume and nature of scams in order to help develop better targeting of efforts to combat them.

1.8 A number of respondents commented that the specificity of "under 55" in respect of the transfer of pension savings was an unnecessary clarification. It was also queried whether "over-55" was too specific and could be replaced with "normal minimum pension age". The Project Bloom taskforce considered the consultation responses and with the government have agreed the following changes:

"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 not anticipated by the member
- persuade individuals over the normal minimum pension age to flexibly access their pension savings in order to invest in inappropriate investments
- persuade individuals to transfer their pension savings in order to invest in inappropriate investments

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

1.9 A small number of respondents suggested additions to this definition, including the "establishment of an occupational pension scheme (to enable movement of pension savings to unregulated investments)" to the list of activities. It is our view that this is covered by bullet 3, above. Similarly, while we agree that individuals may be misled about the tax consequences of their investments, this is covered under the first bullet. Project Bloom agrees that this revised definition will be used to help members to classify pension scam activity.

1.10 In response to question 2.2, respondents also made a number of suggested additions to the permissive list of "hallmarks" of pension scams, including: free pension reviews; claiming to be government; transfers to Qualifying Recognised Overseas Pension Schemes where the individual remains in the UK; and a small self-administered scheme without a professional administrator. These comments have been passed on to Project Bloom for consideration; they will keep this list updated.

2 Banning cold calling in relation to pensions

The government intends to work on the final and complex details of the ban on cold calling in relation to pensions during the course of this year, then bring forward legislation to deliver the ban when Parliamentary time allows.

Introduction

2.1 Cold calling is the most common method used to initiate pension fraud. In 2013, 97% of pension fraud cases brought to Citizens Advice stemmed from cold calling. In the consultation on pension scams, the government set out its intention to ban cold calling in relation to pensions.

2.2 A ban was proposed to send a clear message to consumers that no legitimate firm would ever cold call them about their pension, encouraging consumers to put the phone down on cold callers immediately. It is intended that this will cut off the main mechanism used by fraudsters to persuade people that they are offering legitimate pension investments and services, and in doing so reduce the number of consumer requests to transfer to illegitimate schemes.

2.3 Most respondents to the consultation were very supportive of the proposed ban. Therefore, the government intends to proceed with this proposal to legislate for a ban on cold calling in relation to pensions. This chapter summarises respondents' views and sets out the next steps for finalising the scope of the proposed ban.

Respondents' views on implementing a ban

2.4 Respondents overwhelmingly supported the ban. A large number of providers and trustees reported that their members had been affected by pension scams, and that many of these incidents were the result of a cold call. Consumer groups also reported that they see large numbers of individuals affected. Additionally, the government received some responses from individuals affected by pension scams, with a few reporting losses of up to £500,000.

2.5 A few Independent Financial Advisers (IFAs) and lead generation firms did not support the ban. They argued that consumers benefit from cold calling in relation to pensions: since consumers have a high level of inertia about pensions, it is important to contact them directly to encourage them to take action in relation to pensions, or seek financial advice. These respondents argued that cold calling therefore leads to improved retirement outcomes. However, these views were not shared by all financial advisers who responded.

2.6 Many respondents argued that any potential benefits of cold calling are outweighed by the risks. This is because the impacts of a scam resulting from cold calling can be devastating. Individuals can lose their entire life savings, leaving them without the means to fund their retirement. Respondents felt that the risk of losing a pension fund to fraudsters outweighs any potential detriment caused by inertia in relation to pensions, or by not seeking financial advice. They also noted that there are other ways to tell consumers about the benefits of financial advice. Most respondents therefore agreed that the government should proceed with the ban.

2.7 The government agrees with respondents that the impact of cold calling in relation to pensions is overwhelmingly negative. Therefore, the government intends to proceed with the proposed ban on cold calling in relation to pensions.

2.8 The government believes it is important to raise people's awareness of pensions, and agrees that financial advice is valuable. The Financial Advice Market Review made a number of recommendations to make financial advice more accessible to consumers. These included the introduction of a Pensions Advice Allowance, which will allow people to withdraw £500 tax free from their pension pot to pay for financial advice,[1] and a £500 tax exemption for employer arranged pensions advice. Both allowances are available from April 2017. Additionally, the Financial Advice Working Group is developing new terms to describe 'advice' and 'guidance', to help consumers understand what financial advice can offer them.

The scope of the ban

Calls in scope

2.9 The government proposed a ban with a wide scope to prevent it being circumvented by fraudsters. The consultation listed the sorts of phone conversations that the government intends to fall within the scope of the ban. These included:

- 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
- inducements to transfer a pension fund
- introductions to a firm dealing in pensions investments
- offers to assess charges on the pension

2.10 Respondents generally agreed with the list. Some respondents, primarily IFAs, commented that some of the activities above, such as "assessments of the performance of the individual's current pension funds" are legitimate business activities and should not be included in the ban.

2.11 However, other respondents noted that consumers find it impossible to differentiate between legitimate and fraudulent calls. For example, Citizens Advice found that 9 in 10 people would miss the warning signs of a scam. Therefore, the government will not introduce any exceptions to the ban. Additionally, an important part of the rationale for introducing a ban is that consumers will know that no legitimate firm will cold call them about their pension. Attempting to carve out certain activities would confuse this message.

2.12 Some respondents called for more activities to be included on the list, particularly 'offers to trace lost pension pots' and 'offers to consolidate pension pots', as these offers can be used by

[1] The Pension Advice Allowance can be used a total of three times, though only once in a given tax year. People planning their retirement will, therefore, be able to withdraw up to £1500 from their pension pots, tax free, to pay for financial advice.

fraudsters to draw consumers into a scam. The government is aware of this and will ensure that the sorts of conversations outlined above are covered by the ban and are included in the draft legislation.

2.13 Respondents asked whether the above list will form part of the legislation, inform the drafting of the ban, or function as formal guidance. Respondents stressed the need for the ban to be flexible, for example by enabling changes via secondary legislation or giving the Information Commissioners Office discretion to judge whether calls are in breach of the ban. The government agrees that the legislation must be future proofed, to prevent the evolution of scams that avoid the ban and will include this in the draft legislation.

Products in scope

2.14 The government is clear that direct marketing is a legitimate practice, and that businesses should be able to market their products and services. Given this, the government considers that it is important to ensure a ban on cold calling only restricts direct marketing activities in a way that is necessary and proportionate to meeting its objectives: in this case the aim of protecting consumers from pension scams.

2.15 A number of respondents said that the ban should also be extended to all investment products. This is because scams could occur without mention of pensions, with fraudsters referring to 'alternative investments' instead.

2.16 The government does not consider a ban on cold calling in relation to all investment products to be proportionate. Cold calls in relation to pensions are a special case where levels of consumer detriment are uniquely high. For some UK consumers, especially non-sophisticated investors, pension savings will be their largest financial asset.

2.17 It is worth highlighting that the ban will not be limited to transfers between pension schemes. It will also cover calls where fraudsters encourage individuals to release funds from their pension and transfer them into a bank account, before investing them in inappropriate products. This means that the proposed ban on cold calling in relation to pensions will capture many calls aimed at drawing consumers into activity that might ordinarily be classified as 'investment fraud'.

Exclusions for legitimate businesses

2.18 In the consultation, the government set out two exemptions from the proposed ban: calls where consumers have expressly requested information from a firm, and those where an existing client relationship exists. Respondents generally supported these exclusions; they recognised that consumers should not lose out on services they have requested.

2.19 Respondents asked for clarification on a number of cases where the call would not obviously fall within the above exemptions. These included:

- calls from advisers following referrals, such as a solicitor referring a customer to a financial adviser
- calls from a third party administrator of an individual's pension fund
- calls from a provider to the beneficiary of a deceased member's fund
- calls attempting to locate 'gone-aways'

2.20 The government is clear that it does not want the ban to have an unnecessary or disproportionate impact on legitimate activities.

2.21 Some respondents were concerned that fraudsters may try to use any exemptions to avoid the ban. For example, fraudsters might initially call an individual with, for example, a 'lifestyle survey' to make initial contact, and then call back later to talk about pensions. They were also concerned that fraudsters might use the internet to encourage people to fill in web forms for unrelated services, and treat that web form as an express request for contact.

2.22 The government intends the exemptions for existing relationships and express requests to exclude these kinds of misuse. Draft legislation will seek to prevent fraudsters using the sorts of 'workarounds' raised by respondents.

Electronic communications

2.23 Many respondents supported extending the ban to emails and text messages. They were concerned that if the ban was not extended to electronic communications, scammers would switch tactics and target consumers through electronic channels instead of over the phone.

2.24 In the consultation the government put forward the view that consumers are less likely to be persuaded to invest in a scam by email or text than over the phone, as these methods are not as high pressured and less intrusive. However, respondents outlined a number of ways in which scammers could use electronic communications to circumvent the cold calling ban. For example, a scammer could send someone a professional-looking offer for a free pensions review, with a link to fill in a web form requesting a call back. This would then constitute an express request, allowing the scammer to call the individual. Respondents also argued that the message to consumers that they should ignore unsolicited contact about pensions is less clear if electronic communications are permitted, and this could make the cold calling ban less effective.

2.25 Given the risks outlined above, the government intends to extend the ban on cold calling to all electronic communications about pensions.

2.26 The exemptions for existing relationships and express requests will apply to electronic communications as well as calls. This means that businesses will still be able to contact existing and prospective customers via email and text message.

2.27 Some respondents expressed concerns that extending the ban to electronic communications would prevent firms from marketing their services. This ban will not prevent firms from issuing pensions-related marketing materials to the public, via traditional and/or social media.

Enforcement

The Information Commissioners' Office (ICO)

2.28 In the consultation, the government outlined plans for ICO to act as the enforcement agency for the ban on cold calling. ICO currently regulates firms making unsolicited direct marketing calls. ICO has a number of enforcement powers that it can use to tackle firms in breach of the rules, including issuing monetary penalties of up to £500,000.

2.29 Respondents were supportive of ICO enforcing the ban. They felt that ICO is best placed to enforce the ban due to their experience of regulating unsolicited direct marketing calls.

2.30 A number of respondents called for the government to provide more funding to ICO. The government is working closely with ICO to ensure that it has sufficient resource to enforce the ban effectively.

2.31 Respondents also called for more effective data sharing between organisations tackling scams. One of Project Bloom's founding objectives is to monitor trends, share intelligence on emerging threats, and help co-ordinate action to tackle pension scams. As a member of Project Bloom, ICO is part of the ongoing work in this area.

Sanctions

2.32 Some respondents suggested that the sanctions currently available to ICO are not severe enough, and that the worst offenders should face criminal sanctions and custodial sentences.

2.33 The government does not intend to impose criminal sanctions and custodial sentences on those in breach of the ban on cold calling.

2.34 Where individuals are intent on defrauding someone, they are already committing a criminal offence. Law enforcement agencies and the Financial Conduct Authority already have powers to tackle fraudulent activity, including the power to pursue custodial sentences for the worst offenders.

2.35 Banning cold calling in relation to pensions is an effective way of enabling enforcement action against the perpetrators of pension scams, disrupting their business models and making it harder for them to carry out fraudulent activity. Introducing a ban, without criminalising breaches, allows enforcement action to be taken without having to consider the caller's intent or whether they intentionally, negligently or recklessly breached the ban. The enforcement agency simply needs to show evidence to indicate that it is more likely than not that the ban was breached and a call was made. Significantly more evidence, time and resource would be required to demonstrate to a court that a fraudulent intent existed, than to use the sanctions available to ICO.

2.36 There are already measures in place to tackle unsolicited calls, and the government is taking further steps to tackle nuisance calls more broadly. The Information Commissioner's Office enforces restrictions on unsolicited direct marketing, and the Digital Economy Act passed earlier this year required it to issue a statutory Code of Practice on direct marketing activities.

Overseas firms

2.37 As outlined in the consultation document, ICO will be unable to take action against firms located overseas, as they are outside the UK's jurisdiction, unless the calls are made on behalf of a UK company. Respondents generally appreciated this point. A number of respondents said that an effective awareness campaign would mitigate the risk of consumers being scammed by overseas firms.

Reporting

2.38 Respondents were clear that the ban will not be effective unless individuals are encouraged to report cold calls, and know how to do so. Some respondents suggested that individuals should be encouraged to report cold calls as part of an awareness campaign, potentially via a dedicated call or text line.

2.39 The government will work with ICO to ensure that consumers can easily report cold calls.

Consumer awareness

2.40 The consultation asked for input on how best to make consumers aware of the ban. The government listed various ways to communicate the ban, which included:

- pension providers
- government-backed guidance providers, including the Money Advice Service and Pension Wise

- the FCA's Scam Smart campaign
- 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

2.41 Respondents supported the use of these channels, and organisations who responded generally intended to publicise the ban to their customers. However, many respondents said that the above channels are unlikely to reach people who are not already engaged with their finances. There was widespread support for a mass media campaign, using newspapers, radio and television advertising. Respondents also suggested that the government should target the older population through channels such as GP surgeries and post offices. Generally, respondents said it was important that the media campaign is joined up across organisations to ensure a clear message.

Next steps

2.42 The government intends to work on the final and complex details of the ban on cold calling in relation to pensions during the course of this year. This will ensure that we get draft legislation to ban cold calling in relation to pensions right. The government will bring forward legislation when Parliamentary time allows.

3 Limiting the statutory right to transfer

The government intends to work closely with industry, consumer groups and other stakeholders during the course of this year to help finalise the details of this proposal, in particular to determine the most effective way to implement the employment link. We will legislate to ensure that any changes follow the roll-out of the Master Trust authorisation regime.

Introduction

3.1 In the consultation, the government proposed limiting the statutory right to transfer:

- transfers in to personal pension schemes operated by firms authorised by the Financial Conduct Authority (FCA)
- transfers in to authorised Master Trust schemes
- transfers where a genuine employment link to the receiving occupational pension scheme could be evidenced

3.2 The government believed that this would still mean that trustees or managers would authorise the vast majority of transfers.

3.3 This section summarises the responses to the consultation on the government's proposal to limit a member's statutory right to transfer to another occupational pension scheme. The areas covered in this section are:

- limiting a member's statutory right to transfer
- the proposed requirement to evidence an employment link between the transferring member and the receiving scheme, and how this could be implemented
- non-statutory transfers
- proposals to introduce a statutory discharge form and cooling-off period (as an alternative to limiting the statutory right)
- other proposals put forward by respondents
- next steps

Limiting the statutory right to transfer

3.4 The vast majority of respondents to this question agreed with the government's proposal to limit the statutory right to transfer to the circumstances outlined above and most did not think additional criteria were needed. Many respondents acknowledged the need to ensure legitimate transfers were not blocked unnecessarily. Some respondents also thought that the proposals would address the issues that arose in the High Court judgment in Hughes v Royal London.[1]

[1] [2016] EWHC 319 (Ch)

Only a few respondents to this question disagreed with limiting the statutory right to transfer, citing concerns that this could block legitimate transfer requests.

3.5 Some respondents highlighted that the proposed limitations would mean that people would not have a statutory right to transfer to overseas pension schemes; and suggested that criteria should be developed to enable these transfers to take place securely (e.g. establishing a residency link). These respondents were either directly or indirectly involved in this market. Analysis by HM Revenue & Customs indicates that each year there are generally between 10,000 and 20,000 transfers to qualifying recognised overseas pension schemes (QROPS). Several respondents highlighted that transfers to QROPS remain an area of concern for pension scams.

3.6 The government welcomes the agreement of the majority of respondents to its proposed limits to the statutory right to transfer. The government acknowledges the concerns of some respondents that its proposals might block legitimate transfer requests. The goal outlined in the consultation was that legitimate transfers should not be blocked unnecessarily; this is covered in more detail in the section on non-statutory transfers. In addition, the government recognises that the proposed authorisation regime for Master Trusts will not be rolled out for some time. As we are proposing that authorised master trusts should be one of the routes available once we limit the statutory right to transfer, we will coordinate the introduction of the transfer proposal with the roll out of the authorisation regime. This will ensure that we do not inadvertently limit transfers to authorised master trusts before the regime is rolled out.

3.7 The government does not wish to prevent legitimate transfers to overseas pension schemes. It will, therefore, consider how best to extend the criteria under which there is a statutory right to transfer to include legitimate transfers to QROPS. In this context, the government notes the tightening of the rules around the tax treatment of transfers to QROPS announced in the recent Spring Budget, and will take that into consideration. In addition, it will also factor in legislation that took effect from April 2017 that means that if neither an overseas non-occupational pension scheme nor its provider is regulated it cannot be a qualifying overseas pension scheme or a QROPS.[2] The government will engage with industry and other stakeholders on this issue during the course of this year.

Evidencing an employment link

3.8 Most respondents agreed that evidencing an employment link between the transferring member and the receiving scheme should be one of the criteria underpinning a statutory right to transfer. They agreed that evidence of regular earnings should be provided as well as some evidence of the employer's participation in the receiving scheme. Nearly all the respondents also said that the onus should be on the member to provide this evidence. Some respondents noted that this would help mitigate a scam technique where the scammers persuade the member to let them deal with all the paperwork associated with a transfer. Involving the member by putting the onus on them to provide evidence of an earnings link also increases their personal responsibility in protecting their own savings.

3.9 However, some respondents believed that such an employment link would be ineffective because scammers could circumvent it.

3.10 This concern was also expressed by respondents who favoured using the employment link. They highlighted that the detail of how the link would be evidenced would be crucial to its effectiveness. For example, most respondents agreed that evidence of 'regular' earnings would need to be provided. Respondents suggested this could be provided evidencing a three or six month period but there were different views on the earnings threshold, with some indicating a

[2] http://www.legislation.gov.uk/uksi/2017/398/contents/made

minimum of £100 per month over this duration would be sufficient. Others said that in order to prevent scammers circumventing this by paying notional earnings, the threshold should be substantially higher, at a minimum of £100 per week for the duration.

3.11 As outlined in the consultation, many respondents raised the need for the employment link and proof of earnings to take into account people with irregular working patterns (e.g. zero-hour contracts) or individuals who wished to consolidate their pension pots by transferring into another pension scheme (e.g. a former employer's pension scheme or a decumulation-only occupational pension scheme). Respondents suggested that those on irregular hours could provide bank statements, P60s or even employment contracts as evidence of regular earnings.

3.12 The government agrees that evidence of an employment link should be provided as proposed and that members should be primarily responsible for supplying it. We also note the concerns that fraudsters may try to circumvent this requirement. There are a number of issues and permutations that need to be considered in order to make this work in practice. For example, the right balance needs to be struck between any earnings threshold – too low and fraudsters will likely circumvent it, and if it is set too high it may push greater numbers outside the scope of statutory transfers. We will, therefore, continue to engage with industry and other stakeholders on specific details of the employment link during the course of this year.

Non-statutory transfers

3.13 The government made clear in its consultation that it wanted to avoid, wherever possible, blocking legitimate transfers. The consultation stated that the government expected trustees or managers to make all reasonable efforts to agree non-statutory transfers (where allowed under the scheme's rules) if there was no reason not to (i.e. if the receiving scheme did not appear to be a scam). The vast majority of respondents agreed that the government's proposals would not fundamentally affect existing processes around discretionary transfers and indicated that due diligence checks should continue as normal.

3.14 A small number of respondents to this question were concerned about the risks to trustees associated with agreeing to non-statutory transfer requests. Others suggested that many scheme rules only allow statutory transfers, with some of them preferring this approach as it would be less costly in terms of due diligence.

3.15 The government believes its proposals for limiting the statutory right to transfer should not be used as an excuse to reduce the level of due diligence on any transfer request, not least because pension scams evolve as fraudsters adapt to obstacles that are put in their way. The government is clear that the purpose of these proposals is to help pension schemes and providers combat pension scams. Although the government believes that the vast majority of transfers would meet the proposed statutory criteria, it does not want to create a situation where legitimate non-statutory transfers are blocked simply because a scheme is not willing or able to carry out due diligence.

3.16 The Pensions Regulator (TPR) has made clear that firms and trustees or managers should be undertaking due diligence and it has provided information (e.g. scheme transfers checklist) about what this could entail. In addition, the industry has reacted to the threat posed by pension scams and has supported the Pensions Liberation Industry Group in publishing an industry code of practice outlining ways to minimise the risk of fraudulent transfers.

3.17 The government also notes the views from some respondents that many scheme rules may not accommodate non-statutory transfers. Such schemes may need to consider whether their rules should be amended if they block legitimate non-statutory transfers. The government will consider whether there is a need to provide a power for schemes to amend their rules in this way and whether there is a need to underline in legislation the need for trustees or managers to undertake due diligence. We will engage with industry and other stakeholders on these points in due course.

Statutory discharge letters and cooling-off periods (as an alternative to limiting the statutory right)

3.18 The consultation asked whether it would be effective, as an alternative to limiting members' statutory right to transfer, to provide a statutory discharge letter coupled with a cooling-off period. The discharge letter would, in effect, indemnify trustees or managers who agreed non-statutory transfers if members complained, and the cooling-off period was intended to apply just before the transfer took place.

3.19 Around two-thirds of those who responded to this question disagreed with the need for a discharge letter and a cooling-off period. Respondents argued that such a letter did nothing to protect members and some suggested it could result in a reduction of due diligence checks. They were also concerned that scammers might simply persuade the member to sign the form to push the transfer through. In addition, many firms already use such letters and one respondent said that it was more effective for firms to be able to tailor these letters.

3.20 Respondents also queried the usefulness of a cooling-off period at the end of transfer process, which would have included due diligence checks. They considered that by the time the period applied, the customer would have already been made aware of the risks involved with the transfer. It was unlikely that insistent clients would be deterred at this stage of the process. Other respondents were concerned that a cooling-off period would only add administrative complexity and lengthen the transfer process, which would be at odds with the government's desire to make the existing transfer process more efficient.

3.21 Around a third of respondents to this question saw the benefit of a discharge letter that indemnified trustees or managers from member challenge if a non-statutory transfer proved to be fraudulent – however other respondents queried whether any discharge letter of this kind could be legally binding. Around a third thought that it might be helpful to have a pause in the process to give members time to reconsider. However, many of these respondents felt that the discharge letter and cooling-off period should only happen after due diligence was undertaken. Due diligence not only helps protect members but those that undertake the process as well.

3.22 Having considered all the responses and taking into account the overwhelming support for the government's proposals to limit the statutory right to transfer, we do not consider that there is a need to pursue the alternative option of a statutory discharge letter and cooling-off period. The efficacy of a cooling-off period at the end of a comprehensive due diligence process is doubtful. In addition, whilst the government understands why some respondents appreciated the benefit of a discharge letter that would seek to indemnify them, the government does not see any benefits to members, which is contrary to the consultation's overall aim of protecting members from pension scams and enabling legitimate transfers wherever possible.

Other proposals

3.23 Some respondents suggested variations to the proposals the government was consulting on. One respondent mooted the idea of introducing an authorisation regime to support the transfer process. Under this approach, transfers would only be permitted to occupational schemes registered and authorised by TPR. They suggested that this approach could initially be limited to schemes that wished to accept transfers. Whilst the government can see the attraction of this approach it would require rigorous quality assurance and regular monitoring of authorised pension schemes. The government is already in the process of introducing an authorisation regime for Master Trusts; it would be prudent to implement and establish this process first before considering any significant extension of the scope of this regime.

3.24 As a variation on the above, it was also suggested that transfers should be limited to FCA or TPR authorised schemes. As set out above, the government has been clear throughout the consultation that legitimate transfers should not be blocked unnecessarily. We believe that not extending the right to transfer to current workplace schemes would be too prohibitive.

3.25 Some respondents thought it would be helpful for members who insist on a transfer despite being informed of the risks to be referred to The Pensions Advisory Service (TPAS) for independent guidance before the transfer.[3] This approach is currently being piloted by some organisations with the support of the Pensions Liberation Industry Group. The latter's response advised that while they preferred the referral to be mandatory for 'insistent clients' they believed the approach "could be introduced quickly without legislative change, through being added to the Scams Code as an example of good practice." The government is reluctant to introduce additional legislation compelling members to seek guidance, which members may see as another barrier to transferring their funds. There would also be the risk that scammers simply coach their victims through the process. However, we would be interested to see how effectively the proposed industry-initiated model works in practice and if it is adopted by more firms.

Next steps

3.26 Having considered the responses to the consultation, the government has decided to implement the proposed limitations to the statutory right to transfer. The government will actively engage with industry, consumer groups and other stakeholders on how best to implement the employment link and add QROPS to the statutory transfer criteria. It will also consider whether to underline the need to undertake due diligence in legislation; and whether trustees or managers should have the power to amend their scheme rules in order to accommodate non-statutory transfers where there is no such power already. As noted in paragraph 3.6, the authorisation regime the government is introducing for master trusts will not be rolled out for some time. The government intends to implement the regime in late 2018, with the regime fully rolled out in 2019. We will, therefore, need to consider how the legislation to implement the transfer proposal can align with the roll out of the authorisation regime. This will help avoid limiting statutory transfers to authorised master trusts before they are actually in place.

[3] The government announced its intention to replace the services currently provided by The Pensions Advisory Service, Pension Wise and The Money Advice Service with a new single public financial guidance body. See https://www.gov.uk/government/consultations/public-financial-guidance-review-consultation-on-a-single-body

4 Making it harder to open fraudulent schemes

The government intends to introduce legislation in a Finance Bill later in 2017 aimed at ensuring that only active companies can register a pension scheme.

The government will introduce additional changes to the scheme registration process.

The government will engage with industry, consumer groups and other stakeholders to consider feedback on options to professionalise small self-administered schemes.

4.1 There have been a number of changes to date aimed at improving the tax registration of pension schemes. In the Pension Scams consultation, the government proposed further incremental improvements aimed at addressing the issue of small self-administered schemes being registered with a dormant company as the sponsoring employer of the scheme.

Changes to scheme registrations for tax

4.2 The vast majority of responses to the consultation agreed that there were few, or no, legitimate circumstances in which a dormant company might wish to register a new pension scheme. However, some respondents did highlight circumstances, albeit uncommon, in which a scheme may genuinely be established by a dormant company, such as to consolidate former pension schemes into one new special purpose vehicle; or to establish a new trust scheme to take employees from a not-yet-established company.

4.3 Some respondents suggested a carve-out for trustee companies in relation to schemes where the sponsoring employer is "of substance". They said that any changes to the registration process would also need to account for partnerships or sole traders so that applications from these schemes are not automatically rejected.

4.4 The government therefore proposes to require all new pension scheme registrations to be made through an active company, except in legitimate circumstances, where HMRC will be given discretion to register schemes with a dormant sponsoring employer. This requirement will extend to existing pension schemes if they are registered with a dormant sponsoring employer, with the same discretion so that HMRC can decide not to de-register a scheme in legitimate circumstances. This change will be legislated for in a Finance Bill in 2017. The existing right of appeal if HMRC rejects a scheme registration will apply to this new requirement.

Consent of the sponsoring employer

4.5 A small number of respondents raised concerns about sponsoring employers (also known as 'principal employers'). The role of sponsoring employers is less onerous for defined contribution schemes, than for defined benefit schemes, but their responsibilities may still extend to changing scheme rules (with trustees' consent), appointing scheme trustees and winding up the scheme.

4.6 At present, a sponsoring employer does not have to consent to being affiliated with a pension scheme. So although they may have obligations in relation to a scheme, at present a sponsoring employer does not have to confirm that they know about these obligations and undertake to meet them. Particularly in the context of reintroducing an earnings link, it is important to ensure that sponsoring employers are aware of, and consent to, the opening of a new scheme with their support.

4.7 This consent could be achieved through an additional check by HMRC as part of the application process, and a declaration by the person setting up the pension scheme that this consent had been received. This would make it possible to reject the scheme registration of scheme administrators who provided false information. This will enable HMRC to de-register an existing pension scheme if they find that it has been registered without the consent of the sponsoring employer, subject to HMRC's ability to decide not to do so.

The wider role of small self-administered schemes

4.8 A number of stakeholders commented that resurrecting a requirement for independent or "pensioneer" trustees would greatly reduce the risks associated with SSASs. 25 respondents who indicated that SSASs were vulnerable to scams, or thought that the rules around these schemes should be tightened, suggested the government should reintroduce pensioneer trustees. However, some respondents thought the cost of such a trustee would be prohibitive for their SSASs and they preferred to continue dealing with their SSAS administrator or practitioner.

4.9 The government agrees that pension scheme members with relevant knowledge should be free to choose their own investments. The government will not therefore pursue the option to require pensioneer trustees at this stage.

A Respondents to the consultation

A.1 The following were respondents to the December 2016 consultation on Pension Scams. Twenty-two private individuals also responded.

- Adviser Breakthrough Group
- Aegon
- Age UK
- AJ Bell
- ARC Pensions Law
- Association of Accounting Technicians
- Association of British Insurers
- Association of Consulting Actuaries
- Association of Member-Directed Pension Schemes
- Association of Pension Lawyers
- Association of Professional Financial Advisers
- Association of Professional Pension Trustees
- Aviva
- Barnett Waddingham LLP
- BC&E Holdings
- Beaumont Financial Planners
- BPH Wealth Management
- Burges Salmon LLP
- Capita
- Channack Consultancy
- Chartered Insurance Institute
- Chartered Trading Standards Institute
- Chartered Trading Standards Institute
- Cifas
- Citizens Advice
- City of London Police
- City of London Trading Standards Service

- Commissioner for Older People for Northern Ireland
- Dalriada Trustees
- Equiniti Pension Solutions
- Eversheds Sutherland
- Fairstone Financial Management
- Financial Ombudsman Service
- Financial Services Consumer Panel
- Finsec Partners
- Futures Assured
- Gibraltar Association of Pension Fund Administrators
- Greater Manchester Pension Fund
- Hargreaves Lansdown
- Hemisphere Financial
- Independent Trustee Services
- Information Commissioner's Office
- Investment and Life Assurance Group
- IPM Trustees
- James Hay Partnership
- JLT Employee Benefits
- Law Society of Scotland
- Legal and General
- LV=
- Malta Association of Retirement Scheme Practitioners
- Mattioli Woods
- Mercer
- Merseyside Pension Fund (Wirral Council)
- Momentum Pensions Limited
- Moorland Mayfair Wealth Management
- NEST Corporation
- Nigel Sloam & Co
- Northern Ireland Public Service Alliance
- Now Pensions

- Old Mutual Wealth
- Openwork Limited
- Pension Life
- PensionBee
- Pensions and Lifetime Savings Association
- Pensions Liberation Industry Group
- Pensions Management Institute
- Phoenix Group
- Pinsent Masons LLP
- Profile Financial
- Prudential UK & Europe
- Railways Pension Trustee Company Limited
- Retirement Advantage
- RMT Group
- Royal London
- RPMI Limited
- Sacker & Partners LLP
- Scottish Widows
- SensInvest
- Slaughter and May
- SSASPractitioner
- Standard Life
- Superannuation Arrangements of the University of London (SAUL)
- Tempo Pension Services
- The Mellor Practice
- The Pensions Advisory Service
- The Pensions Lawyer
- The Pensions Regulator
- The Society of Pension Professionals
- Thompson Tobin Financial
- TISA
- True Potential LLP

- Vintage Financial Services Limited
- Which?
- Whitbread Group
- Whitehall Group UK
- Willis Towers Watson
- Xafinity
- Zurich Insurance

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