The Chartered Insurance Institute
Standards | Professionalism | Trust

Personal Finance Society
Standards | Professionalism | Trust

Consultation Response

13 February 2017

HMT: Pension Scams

- The Personal Finance Society and the wider Chartered Insurance Institute and welcomes this consultation on Pension Scams.
- We believe the Government, regulators and financial advice professionals have a common and joint responsibility to act in the interests of consumers by seeking out and eliminating the unscrupulous behaviour of cold callers, scammers and fraudsters.
- We fully support efforts to stamp out this scourge. In November 2016, The Personal Finance Society launched an awareness and whistle-blowing national campaign on investment and pension scams, teaming up with the FCA on its ScamSmart campaign. We have also been partnering with the Jersey Financial Services Commission in its new a high-profile campaign to help fight investment scams in that jurisdiction.

About the Personal Finance Society and the Chartered Insurance Institute

The Personal Finance Society is the UK's largest professional body for the personal finance sector, with 36,951 members including 5,303 Chartered Financial Planners[1]. While this membership mainly constitutes individual practitioners, including a significant share of the UK retail investment adviser population, the Society also encompasses another 678 financial planning firms that have Corporate Chartered status. The Personal Finance Society is part of the Chartered Insurance Institute which is the world's leading professional body for insurance with over 126,000 members in 150 countries. Our Royal Charter remit is to secure and justify the confidence of the public in the profession. We do this by promoting the highest standards of professionalism for technical knowledge, client service, culture and ethical practice across the entire membership for the ultimate benefit of the public.

We support our members with achieving this goal through a wide programme of activities, including advocacy, good practice guidance, Continuing Professional Development (CPD) events, publications and related tools. Our work includes the provision of examinations (meeting 'appropriate examination standards' owned and maintained by the Financial Conduct Authority), actively promoting ongoing learning such as structured CPD and as such were one of the first issuers of Statements of Professional Standing under the FCA adviser professionalism regime.

As a professional body, the Personal Finance Society and the broader Chartered Insurance Institute recognises its evolving role to influence the cultural as well as technical and ethical behaviours of our members.

Our overall views

The Personal Finance Society and the wider Chartered Insurance Institute welcome this consultation on Pension Scams. We believe the Government, regulators and financial advice professionals have a common and joint

[1] All membership numbers as of 31 October 2016.

responsibility to act in the interests of consumers by seeking out and eliminating the unscrupulous behaviour of cold callers, scammers and fraudsters.

In November 2016 the Personal Finance Society and the Financial Conduct Authority together launched a national awareness and whistle-blowing initiative to help expose investment and pension scams. We believe personal finance professionals are better placed to spot scams quicker than unsuspecting members of the public, and as a profession have a vested interest in contributing to the wider effort of helping protect all consumers as well as those typically more vulnerable to scams.

The recent low interest rate environment, coupled with far reaching pension reforms, have increased the potential number of consumers vulnerable to a raft of "too good to be true" investment scams. We believe the advice profession had a key role to play in protecting consumers, given both the growing number of people who are losing significant sums each week to scammers and the reality that many scammers are becoming more and more sophisticated in their targeting and approach.

As such, we support all attempts by government and regulators to stamp out this scourge, as well as efforts to mobilise as a united profession, for example by identifying and reporting potential scams via the FCA's *ScamSmart* website. Specifically the Personal Finance Society has recently given substance and direction to its campaign by publishing a four step commitment for personal finance professionals, as follows:

1. Raise awareness of scams and their typical warning signs amongst clients and professional networks
2. Commit 15 minutes a month to help identify potential scams by scouring press, web and telephone promotions
3. Regularly check and refer clients to the FCA warning list of recently unearthed scams
4. Report suspected scams to the FCA at www.fca.org.uk/consumers/report-scam-unauthorised-firm

We are also partnering with the Jersey Financial Services Commission (JFSC) following a specific invitation from them to support a consumer awareness campaign tackling investment scams. This campaign entitled *Don't Pay the Price* was formally launched on 16 January involved a series of high profile television advertising and radio announcements visible to all consumers in the Channel Islands (and further afield)[2], and included a comprehensive briefing to key stakeholders and media starting with regulatory staff and members of government. This was a first for the JFSC and we at the Personal Finance Society are honoured that they actively sought our exclusive involvement to work in partnership. We are keen to develop similar initiatives with other regulatory or consumer bodies.

In summary, we support the package of measures proposed in this consultation (subject to some minor concerns detailed within our response), and believe they will make it more difficult for those with intent to scam to act fraudulently in the first place, cutting off a key source of pension scams and thus further ensuring protection for hard working people trying to do the right thing in respect of the retirement provision.

Responses to specific questions

Chapter 2: Common pension scams

Q2.1: Does the definition in 2.1 above capture the key areas of consumer detriment caused by pension scam activity?

Broadly yes, although we would widen the definition as follows (in italics):

- release funds from an HMRC registered pension scheme, often resulting in a tax charge that is normally not anticipated by the member;

---

[2] See for example the following webpage including video links of the adverts themselves: "VIDEO: Islanders warned about bad financial advice," *Baileywick Express*, Mon 16 Jan 2017 http://www.bailiwickexpress.com/jsy/news/financial-services-say-dont-pay-price/#.WJhUhlOLQdV

- persuade individuals over the age of 55 to flexibly access their pension savings in order to invest in inappropriate investments *or make payments to any individual/ body/firm/organisation under duress*; and
- persuade individuals under 55 to transfer their pension savings in order to invest in inappropriate investments *or make payments to any individual/ body/firm/organisation under duress*.

Q2.2: Are there any other factors that should be considered as signs of a scam?

Yes: attempts to suggest that giving away pension funds, in total or in part, will directly result in an increased likelihood of the state funding social care (ie. ignoring the 'deprivation of assets' rules).

Chapter 3 Banning cold calling in relation to pensions

Q3.1: In your experience, how are consumers affected by cold calling about pensions? Do any consumers benefit from cold calling about pensions?

Although the true extent of detriment from cold call-based pension fraud is unknown, the impact on consumers of pensions cold-calling in general is almost entirely negative. Many people may not realise they have fallen victim to a scam for some time. Besides which, pensions are too important and complex a subject to be cold-called about.

There is an argument that legitimate pensions cold-calling has a role to play in increasing consumer awareness and understanding, especially for those who have not accessed financial advice. However, in our view any benefits from this argument are significantly outweighed by the risks, and the regulatory costs of the measures to protect the public and reduce pension scam activity.

Q3.2: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?

Yes. We would suggest that the scope of the ban should be expanded to include any unsolicited phone conversation concerning releasing pension funds, early or otherwise.

We would also support extending any ban to all companies offering unregulated 'free pension reviews' regardless of the means by which they do so, ie. not just those using cold-calling. The only exception to this ban on unregulated pensions reviews would be public financial guidance issued by the Pensions Advisory Service and its successor the Single Financial Guidance Body following the Government's public financial guidance reform.

Q3.3:Do you agree that existing client relationships and express requests should be excluded from the proposed ban?

Yes: it is imperative that legitimate interactions between firms and consumers are not adversely impacted by a ban on cold calling. In this context, the concept and associated FCA rules in respect of an 'established existing client relationship' seem appropriate. This said, it would be important for the government and regulator to work together and consult widely to ensure absolute clarity (where possible) around the circumstances and types of calls in scope/out of scope should a ban be introduced.

Q3.4:What would the costs and benefits be of extending the proposed ban to include all electronic communications?

Pension scams come in many forms and it is in the nature of scammers that if one 'route to market' is closed, they will seek out another. As such, whilst we agree that consumers can more easily disregard other forms of communication from phone calls, we see benefit in extending the proposed ban to include uninvited emails, texts, promotional brochures, social media or calls in response to an expression of interest from the consumer that cannot be substantiated.

Should such extensions take place, it would again be critical that legitimate interactions be excluded to avoid unintended consequences, such as financial advice firms being restricted in their attempts to explain the value of advice and their services to consumers further contributing to the 'advice gap'.

Q3.5:How can the government best maintain the clarity of existing PECR concepts in light of the proposed ban on pensions cold calling?

We support extending any ban to include general investments and cover text messages, e-mail and other forms of communication cold-callers use to manipulate customers. As such, the government needs to ensure the rules in respect of the ultimate nature of any proposed ban and those of the existing Privacy and Electronic Communications Regulations (PERC) are altered and aligned as required.

Q3.6:How can the government best ensure consumers are aware of the ban?

Based on our recent experiences, we recommend the following measures:

- Make the nature and extent of the ban clear and comprehensive
- Engage fully with regulators, professional and trade bodies in respect of an integrated communications strategy for consumers
- Scheme members should be made aware of the ban and the reasons for it. Awareness material, including the Pension Regulator's Guidance (the 'Scorpion' materials), should be provided in transfer packs and statements, as well as on websites where applicable.
- Ensure absolute clarity in respect of excluded, legitimate interactions between regulated financial services firms and existing/potential customers and consumers

Q3.7:Do you have any views on enforcement mechanism set out in paragraph 3.10 above?

Taking a hard line on pensions (or wider) cold calls will not prevent consumers from being deceived by pension scammers posing as advisers, but should reduce the number of such scammers, specifically those who will be put off such activity as a result of the threat of enforcement.

Given the above, the enforcement mechanism set out in paragraph 3.10 would seem fit for purpose

Q3.8:Is there any reason why legitimate firms' business models should be affected as a result of the ban?

No, subject to absolute clarity in respect of excluded, legitimate interactions between regulated financial services firms and existing/potential customers and consumers. Opportunities for Financial Advisers to be able to prospect in an ethical and profession way should remain. Otherwise the ban will be one more challenge to firms profitability and will increase the likelihood that scammers will fill the vacuum thereby created.

Q3.9: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?

No.

Chapter 4: Limiting the statutory right to transfer

Q4.1: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 agree that members of pension schemes should continue to have a right to transfer, but that it is necessary to limit that right in certain circumstances in order to protect individual's savings. The proposed limits to the statutory right to transfer seem appropriate , and if this means that the vast majority of transfer requests would continue to be agreed, then also proportionate.

Where an individual does not have a statutory right to a transfer (because, for example, they are a member with non-flexible (DB) benefits and within one year of their scheme's normal pension age), they may still have a right to transfer under the scheme's rules. More individuals are likely to fall in this category if the proposed changes to statutory transfers are adopted and clarity would be needed in such circumstances.

Q4.2: Would a requirement to evidence a regular earnings link act as a major deterrent to prevent fraud? How could the requirements be circumvented?

Yes. We cannot comment on how the requirements could be circumvented.

Q4.3: How might an earnings and employment link be implemented? Should the onus be on the scheme member to provide proof of earnings?

A regular earnings link could prove difficult to demonstrate in some legitimate circumstances, such as zero-hours contract workers who may not receive or be able to demonstrate regular earnings, or self-employed individuals who have been previously employed and who are looking to consolidate their pension pots

A requirement to demonstrate a scheme member's regular earnings may place an additional burden on the participating employer if they are required to evidence this, so placing the onus on the scheme member to provide proof of earnings seems a preferable route.

Q4.4: What would be the impact and cost to trustees / managers / firms?

We suggest the benefits of implementing an earnings and employment link would outweigh the likely costs to all the above.

Q4.5: 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?

We suggest that only where a statutory right to transfer exists should transfers be allowable. Where scheme rules allow non statutory transfers, scheme rules should be changed.

Q4.6: 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?

We do not believe it would be effective as scammers would most likely persuade their 'clients' as to the necessity to sign the discharge form. This, and limiting any recourse the individual has to the ceding scheme in the event that the receiving scheme is a scam, will not in our opinion significantly increase consumer protection by avoiding putting their money into scams in the first place.

Q4.7: How could it be ensured that a statutory discharge of responsibility did not reduce the requirement on firms and trustees to undertake due diligence?

We do not believe it should be introduced (see answer to question 4.6).

Q4.8: 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?

A statutory cooling off period, under which the transferring scheme would delay all transfers, for example by 14 days, to allow the member to reconsider their decision to transfer would seem intuitively sensible, although we have no evidence of how this would directly combat pension scams, beyond the provision of time to reconsider and for those with the best interests of a vulnerable scheme member to have a greater opportunity to be made aware of any transfer attempt.

Q4.9: 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?

Trustees or managers should only be allowed to handle transfers that meet the new proposed statutory requirements.

Q4.10: Are there other potential risks that this proposal might present? Do you have any suggestions as to how these risks might be mitigated?

We believe the only way to mitigate this risk is to make it an absolute requirement that firms and trustees establish the legitimacy of the receiving scheme.

Chapter 5: Making it harder to open fraudulent schemes

Q5.1: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?

Yes.

Q5.2:Are there any further actions that the government should consider to prevent SSASs being used as vehicles for pension scams?

Under the current lighter legislative and regulatory framework, SSASs are exempt from many of the governance requirements, on the basis that they are generally run by the members themselves. This is a very different regime from the FCA approach to the regulation of SIPPS.

This said, the problem is not rooted in the SSAS wrapper; but rather investments that the scammers use. The FCA should look to regulate these or HMRC should reintroduce an 'acceptable' investment list.

13 February 2017

Contact:

Laurence Baxter
Head of Policy & Public Affairs
020 7417 4783
laurence.baxter@cii.co.uk