ASSOCIATION OF CONSULTING ACTUARIES

Association of Consulting Actuaries Limited · First Floor · Regis House · 45 King William Street · London · EC4R 9AN
Tel: +44 (0)20 3102 6761 · Email: acahelp@aca.org.uk · Web: www.aca.org.uk

14 February 2017

HM Treasury

Dear Sir / Madam

Pension scams

I am writing on behalf of the Association of Consulting Actuaries in response to the consultation with the above name issued on 5 December 2016. I am sorry for slightly missing your response deadline.

We are very supportive of further action being taken to combat pension scams and agree in principle with the three prongs in this consultation document – namely a ban on cold calls, limiting the statutory right to a transfer and making it harder to open fraudulent schemes. However, looking below the headlines we have some concerns in each of these areas.

Our responses to the questions set out in the consultation document are set out in the Appendix.

We hope that you find these of assistance and would be happy to discuss them further if that is helpful. Please contact either me on 020 7432 6635 (david.everett@lcp.uk.com), my colleague Ben Fisher on 0118 9185417 (Ben.Fisher@xafinityconsulting.com) who prepared this response from the viewpoint of larger occupational pension schemes, or Nigel Sloam on 020 8209 1222 (nigel@nigelsloam.co.uk) who contributed thoughts from the viewpoint of smaller occupational pension schemes and their advisors.

Yours faithfully

David Everett
Chairman, Pension Schemes Committee
On behalf of the Association of Consulting Actuaries Limited

Sent by e-mail to: PensionScamsConsultation@HMTreasury.gsi.gov.uk

APPENDIX

ACA response to the consultation on pension scams

Definition of a pension scam

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

We agree with the three types of situation covered by the definition. However, they do seem to miss out on one almost obvious area of consumer detriment; that is the case in which following a pension transfer the member is unable to make contact with the receiving scheme and ultimately loses the entire pension that is transferred. Maybe this falls under "inappropriate investments" but we believe that this form of "theft" should be included as a definition.

Whilst it is useful to develop a definition in order to focus the activities of those participating in Project Bloom, it is not clear to us how (if at all) you intend to use this definition in legislation.

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

In addition to the factors that you have listed we also believe that the signs of scams could also include:

- Offers of a free pension review by unregulated advisors;
- Time pressure to make the transfer or else miss out on opportunities;
- Offering increased investment return rates if greater amounts of money are transferred (but not if this is simply as a consequence of tiered expense rates); and
- Lack of explanation on fees and penalties.

Banning cold calling

We agree that it is necessary to impose a ban on cold calling in relation to pensions. However, given the success that scammers are having with this route to market, we fear that they will simply make calls from abroad or otherwise avoid detection. We ask that you explore exempting regulated advisors as our concern is that they might inadvertently be caught by the scope of "in relation to pensions" once this is given legislative form.

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

Cold calling by unregulated advisors in relation to pensions is pernicious and needs to be stamped out. It is simply unacceptable for the public, some of whom will be particularly vulnerable, to be exposed to persistent attempts at what is often no more than robbery. We suggest that cold calls from regulated entities should be permitted so long as they are followed up in writing.

Although in some cases the cold call can prompt the individual to take legitimate and appropriate actions regarding their pension that they otherwise wouldn't have done, this small benefit does not outweigh the risk of scams posed by cold-calling by unregulated advisors.

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 scope of the ban should include all of the activities in paragraph 3.5 (but with regulated advisors being exempted, provided that they confirm the call in writing). It may also be beneficial for a ban on such actions to be extended to communications via text message (SMS) in addition to cold calling. Once an individual replies to a text message they are presumably "giving permission" for the sender to then call them, and so this call would no longer be defined a "cold call".

It is our understanding that the Telephone Preference Service is currently unable to prevent text messages in the same way that it can calls. We suggest that this is looked into further.

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

We agree that existing client relationships and express requests should be excluded from the proposed ban.

Following an "express request" it should be straightforward for an individual to change their mind about wishing to receive further information and hence be able to "cancel" the express request and not receive any further calls from that party unless a new express request is made.

Regarding existing client relationships, often a pension provider will outsource administration services to a third party. It is not uncommon for such providers to change the administrators from time to time. The appointment of a new administrator should not represent a new relationship and hence prevent the administrator from contacting the consumer. Rather we would see the new administrator as acting on behalf of the provider who has an existing relationship with the consumer.

Within the occupational pension scheme environment there can be a number of occasions when scheme members are contacted perfectly legitimately and it is important that these are not categorised as cold calls (or perceived as such by members). We suggest that the call is not cold if it has been instigated either by the trustees or the employer and the member has been pre-notified. Examples of calls include those relating to liability management exercises, member tracing, health questionnaires and regulated apportionment arrangements.

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

We agree with the assertion that unregulated phone calls pose the greatest scam risk to consumers. Other forms of electronic communications are frequently used by scammers in order to encourage or entice a consumer to engage with the scammer. Following a ban on cold calls, it is possible that scammers will utilize electronic communications in order to try and "trick" a consumer into creating an "express request" to the scammer so that the scammer can then instigate a phone call without breaching the proposed legislation.

This could be in the form of a text message (SMS) to the consumer promising a free pensions review if the consumer clicks on a URL in the message or sends a reply text. This response by the consumer could constitute an express request and hence the scammer can then legitimately call the consumer.

A similar situation could arise from Email spam.

We do appreciate that there would be additional cost involved with extending the legislation to forms of electronic communication and being unaware of this additional cost it is not possible for us to know whether the benefits of extending the ban would justify the extra cost.

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?

Since the introduction of the pension freedoms & flexibilities in April 2015 the distinction between pension savings and other more general savings has become less and less clear. As a consequence it is likely that financial products do not fall so clearly into one camp or the other as they may have done prior to April 2015. As such it could be unclear if they are subject to the existing PECR concepts or the proposed pensions cold-calling ban. Therefore there would need to be consistency between the two sets of regulations in order to ensure that no scammers are able to slip through the net and sidestep both sets of regulations.

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

We agree that raising awareness of the ban on cold calling is essential, but for this to happen there needs to be a sustained campaign that goes beyond pension providers and Government agencies. This could include publishing articles in the daily/weekend national papers and television adverts which should include the requirement that only regulated advisors – whose regulated status can be checked – are entitled to advise.

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

We are not experts on the ICO's risk-based approach to enforcement. If it is similar to the risk-based approach that the Pensions Regulator uses generally it could potentially mean that many lone scammers will slip under the enforcement net and be able to carry out scam activities without being stopped by the authorities.

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

Legitimate advisory firms' business models could well be affected adversely by a blanket ban on cold calling and that is why such a ban should not be applied. Legitimate new advisory firms should be allowed to enter the market without unnecessary impediment.

There are very few circumstances that we can think of where a pension scheme calls a member without prior warning, such that the member could think it was a "cold call" and as such choose to ignore or even report it. It is standard practice on the vast majority of pension schemes that we are involved with for administrators to precede any telephone call with a letter or email informing the member that a call is going to, or may, be made. We do not know if this process is universal across all schemes, particularly smaller schemes that administer benefits in-house. However, the adoption of such a practice would provide additional protection for members of such schemes from scam cold calls. The only circumstance we can think of where a scheme administrator might telephone a member without having first sent a letter or email is if the telephone number was the only contact detail they had.

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?

No.

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?

Yes, we agree that the statutory right to a transfer should be limited, particularly in the light of the High Court ruling in relation to Hughes v Royal London. However, we are of the view that the statutory discharge route that you propose as an alternative should also be available along with appropriate protections – otherwise there could be unhelpful and bad pension consequences in a significant number of cases.

If ceding trustees, particularly commercial trustees, are able to use the proposed limitations to prevent transfers to bona fide schemes then fresh scams will be created whereby funds may be retained – but not to the member's advantage. Individuals may be rightly unhappy at the behaviour of current trustees and want to change them and the proposed limitation would interfere with this natural right and choice. We believe that the proposed limitation, unless modified, is misconceived.

<u>Transfers to small-self-administered schemes</u>

Under the discharge route, clients, having taken regulated advice, should not be prevented from making a transfer – often from pension schemes whose utility has outstripped their current requirements. For example, there is no reason to preclude close members of a SSAS member's family or other associates joining as members of a small administered pension scheme where there is a clear affinity with the principal members – but not necessarily an employment link.

<u>Transfers to QROPS</u>

Our understanding of the current position in relation to destination schemes that fall within the scope of the statutory right to transfer is that they are governed by section 95 of the Pension Schemes Act 1995 and Regulation 12 of The Occupational Pension Schemes (Transfer Values) Regulation 1996. It would appear that under your proposal, the current statutory right to transfer to a qualifying recognised overseas pension scheme is to be removed. This aspect is not explored in the consultation paper.

We would support transfers to QROPS being possible on a non-statutory basis, or as of right where a statutory discharge form has been completed which includes details of supporting advice from a regulated advisor. The discharge route would deal with the anticipated position of a number of occupational pension schemes choosing not to process QROPS transfer requests (following the proposed limitations on the statutory right to transfer) given the cost of due diligence and the risks that a number of such destination schemes present.

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?

In theory the requirement to prove the regular earnings link in relation to transfers to occupational pension schemes that are not authorised master trusts would act as a deterrent. However, it would not be foolproof.

Scammers are already adept at completing paperwork on behalf of a member in such a way as to not show any tell-tale signs of scam activity and hence to pass all of the standard checks undertaken by the administrators of the transferring scheme. If the proof of earnings requirement was also to be paper based, then it is quite possible that scammers could find a way of also making this look authentic.

Members are often intimidated by the usually lengthy and complicated paperwork required for a pension transfer (or indeed most financial transactions), so are only too grateful when someone, who is an "expert" offers to complete it on their behalf. Scammers use this to their advantage in order to gain control of the paperwork by offering to help the member. The scammer can then limit the member's interaction with the questions/information in the form. This could include "brushing over" the earning link requirement and then using false paper evidence of a link to satisfy the transferring scheme. The member will potentially not even realise that such an earnings link will need to be proved.

In general the meaning of "regular earnings" would need to be defined as it could mean many things.

Given that evidencing a regular earnings link can be manipulated, we suggest that other mechanisms are explored – for example, proof of audited scheme accounts. All occupational pension schemes could be required to submit their audited accounts to the Pensions Regulator which would then set up a database that anyone could interrogate on-line purely to establish the existence and year end of the most recent such accounts.

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?

Putting the onus on the member may create difficulties for the member, and could serve to discourage genuine transfers. If this was the case, then it would help to create a clear process that a member would have to follow to obtain the necessary evidence from the receiving scheme. If this is "paper-based" then there is a risk that the scammer could create the appropriate paperwork to make it look like there was an appropriate link (see above).

Further, we do not believe that the employment/earnings link is always appropriate. It is reasonable, as we have said, for those with close connections to join as a member of a pension scheme initially set up by an employer for key employees – subject to the consent of those most closely involved. There is nothing untoward about this. For example, there are many cases where a retired spouse wishes to manage his or her pension fund investments in conjunction with their spouse. This does not mean necessarily that they will have had a common employment. Prohibiting this could harm pension saving. We suggest that the discharge route should be available for them.

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

The impact of requiring confirmation of an earnings link would clearly have the potential to create more work for the transferring scheme's trustees/administrators. Just how much more would depend on the process required.

If the limitations on the statutory right are imposed as envisaged, without the alternative of a statutory discharge form, as above, then a direct result may be that pensions remain in unwanted format with unwanted providers who will be able to generate unjustified charges and not act in the best interests of the underlying members. Decent regulated firms will be prevented from giving advice in the best interests of their clients. We believe that this is wrong and unacceptable and will create new injustice.

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?

We would not expect to see too much change here. Many schemes currently permit non-statutory transfers (in particular from defined benefit schemes in the year before retirement). We would still expect schemes to carry out the same level of due diligence to guard against the risk that the member was transferring to a fraudulent scheme. Presumably if the above proposals are introduced an additional level of due diligence for a non-statutory transfer could be a check of the earnings link. If a straightforward and effective process can be established for this then this extra level of due diligence would not be a burden for the scheme trustees/managers.

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?

We don't see this as an acceptable ***alternative*** to limiting the statutory right to a transfer and we are not convinced of its usefulness if the statutory right to a transfer has been restricted as proposed. If it were to be introduced, the statutory right to transfer would have to be subject to the member signing the discharge form.

But in response to your question asking about its introduction ***as an alternative*** to limiting the statutory right to a transfer:

- Pro: Speeds up resolution for insistent members and even removes an impasse.
- Con: Scheme managers and trustees could use it as an "easy" option. Rather than undertake the appropriate amount of due diligence, they instead just undertake a cursory check as to whether it is a scam. If they have concerns they raise them with the member and then offer a discharge form option if the member still wants to transfer. This will reduce the cost to the transferring scheme without holding up any transfer. Ultimately the scheme may not do as much as it would have otherwise to protect its members from a scam.

As we have mentioned above, we are of the view that if the statutory right to transfer is to be restricted, then the statutory discharge form should be introduced along with appropriate safeguards. We think that it would be reasonable for those going down the discharge route to require additionally that they have taken advice from a regulated advisor whose name and reference numbers should be included on the form – and whose advice should be evidenced.

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?

If it were decided to introduce a statutory discharge form, then, without further modification, it would seem necessary to formalise the minimum level of due diligence required to be undertaken before a discharge could be offered. Regulations would have to stipulate that certain steps must be undertaken before a discharge could be offered to an insistent member, for example, the consent of the member's spouse. But due diligence is not something that is capable of being codified in regulations as it needs to respond to a potentially ever-changing landscape of threats. Formalising due diligence could make the processing of a transfer more costly for schemes to carry out and would also risk it becoming just a box ticking exercise for administrators, with the minimum level of being undertaken just to make sure that the transfer can be processed.

However, there is a limit to the ability of ceding trustees and managers to undertake sufficient due diligence – and their costs may be unacceptably high. Many arm's length providers have no capacity for assessing an individual's requirements which are usually relayed to them by a third party (an IFA or similar). We therefore believe that the best way forward with the statutory discharge form procedure is to include within it a requirement that the individual requesting a statutory discharge has taken advice from a qualified advisor.

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?

The proposal appears to be not so much a "cooling off period" (which occurs in other areas after a transaction has taken place) as a "pause for reflection" in the transfer process. As such we are not convinced that this gives any consumer protection, or whether transferring members will use the time to actually reflect on what they are doing. It would certainly add to the transferring scheme's costs.

If it were to be introduced, the existing statutory timescales for processing transfer values would need to be adjusted. There would also have to be a written communication to the member from the transferring scheme that would have to be issued in a very timely manner, to the effect that everything is now in place for the transfer to proceed, but it will be delayed for a period during which the member would have to contact the transferring scheme if they have second thoughts.

Having said this, we have seen anecdotal evidence of information provided by the transferring scheme having an impact on a member's decision as to whether to transfer or not. When insistent members are provided with more information about how pension scams work (either written or preferably verbally) and are then able to see similarities with the process they are involved in, we have seen members changing their minds about transferring. So in this respect a period of reflection by the member could help them to "see" the risk that they are taking.

Clearly scammers don't want to give their potential victims a chance to think it over, hence the tactic of trying to pressurise the victim into transferring as quickly as possible using incentives such as better deals.

If it is widely known that there has to be a (say) 14 day pause by law, then arrangements that push the member into trying to transfer more quickly than this could be exposed as a potential scam – given that a legitimate scheme would understand the requirements for the pause and would have no objection to complying with it.

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?

As we have mentioned above, the completion of a statutory discharge form with confirmation and evidence that the person has been advised by a regulated advisor should be available as an alternative where the statutory right to transfer does not otherwise exist.

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?

We have chosen not to respond to this question.

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?

Although the proposal appears attractive, some companies may be dormant pro tem or newly created through business being changed. These should not be restricted from providing pension schemes or indeed pensions for new staff. Furthermore, it is not obvious from public records whether at any moment in time a company is dormant or what dormancy means. In some circumstances, such as for example divorce or division of family interests, the revival of a dormant company could provide a good solution for establishing, separating and/or dividing pension benefits – and other resources.

So we are not convinced that a blanket ban on dormant companies is appropriate. We are also concerned with the unacceptable delays now occurring in the registration of bona fide schemes.

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

There is generally a lack of understanding by the public of what a SSAS (or a SIPP) is. Ensuring that there is clear information available (e.g. on the Regulator's website or on Pension Wise) could assist members in deciding whether these would be appropriate vehicles for them to transfer to.

However, SSASs are useful not just for small businesses. They are often appropriate as pension vehicles for senior employees or affinity groups. All pension schemes are open to abuse. In the first nearly 30 years of their existence SSAS's operated very successfully and enabled good pensions to be built up for many – totally appropriately – as a result of there being at all times an independent, experienced trustee, acceptable to the then Inland Revenue.

We, therefore, believe that there are three ways in which the operation of pension scams through SSASs can be minimised:

a) Unless an employment link can be demonstrated, any transfer to such schemes should be on the basis of having received regulated advice.

b) The commercial establishers and key advisors of such schemes should be regulated. At the moment unregulated persons or firms can advise on the set up of such schemes – and do so. We believe that this activity should be regulated.

c) SSAS should have a regulated independent trustee – who would in practice perform the missed and valued function carried out for nearly 30 years by "pensioneer trustees". This would stop many scams. Such independent trustees' consent should be required before certain investments can be made.

   Pensioneer trustee status was granted by the former Inland Revenue – now H M Revenue & Customs – and such trustees had to provide annual summaries to HMRC as to their involvement. Prior to 6 April 2006, when pensioneer trustees were required, very few such scams arose.

About the Association of Consulting Actuaries (ACA)

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes.

The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

Disclaimer

This document is intended to provide general information and guidance only. It does not constitute legal or business advice and should not be relied upon as such. Responding to or acting upon information or guidance in this document does not constitute or imply any client /advisor relationship between the Association of Consulting Actuaries and/or the Association of Consulting Actuaries Limited and any party, nor does the Association accept any liability to any person or organisation relating to the use of such information or guidance.