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Government Action in the Fight Against Pension Scams

The battle to combat pension scams has been waged by the industry and regulators for many years now. There is no easy answer to any of this. Those behind the scams are very adept at modifying their practices to counter the steps taken by the industry to protect members' pension savings.

It has been apparent for some time that legislative changes would be necessary, to really tackle those behind the scams. A consultation was undertaken on proposals at the end of 2016, and the government response has now been published.

This brings good and bad news. While most of the government's proposals appear to be taken forward, the lack of Parliamentary time over the next couple of years due to the focus on Brexit, means that there is currently little clarity in terms of when the government's much-needed proposals may come into force.

What is the government going to do?

The new measures to protect members will include:

- Banning the cold calling of individuals in relation to pensions.
- A tightening of the HMRC's procedures for registering new pension schemes.
- Action to help prevent the transfer of pension savings from occupational pension schemes into fraudulent arrangements.

What is meant by a ‘pension scam'?

The consultation sought views on a proposed new definition of a pension scam put forward by the multi-industry taskforce at the forefront of the fight against the fraudsters, Project Bloom. This was broadly welcomed, and following a couple of minor changes as a result of responses to the consultation will now define a pension scam as:

“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."

A Ban on Cold Calling

This proved to be a very popular proposal, receiving widespread support. It is based on the premise that no legitimate firm will cold call individuals about their pensions. This will extend to all electronic communications – emails, text messages etc. – as well as telephone calls. The scope of the ban will include offers to trace lost pension schemes and consolidate pension savings, as these are tactics that can be used to draw people into scams. It will also cover calls to move pension savings into bank accounts, before investing them elsewhere, as well as transfers between pension schemes.

The government understands that the legislation must be future proofed as far as possible, so as to prevent the evolution of scams.

It is not intended to have an unnecessary or disproportionate impact on legitimate business activities. There will be no impact on existing business relationships or where members have specifically requested information.

The ban will be enforced by the Information Commissioner's Office (ICO), which currently regulates the making of unsolicited direct marketing calls, and can issue penalties of up to £500,000 for breaches of the rules. Calls from overseas (unless made on behalf of a UK company) firms do not come within the scope of the ICO, but the ban will be imposed in the basis that if cold calls are banned from within the UK, why should they be made from elsewhere? The government will work with the ICO to ensure that members can easily report cold calls that they do receive.

The government intends to work on the final and complex details of the ban during the course of this year, so draft legislation can be as comprehensive as possible. The government will then bring the legislation into force when Parliamentary time allows.

Limiting Members' Statutory Right to Transfer

The government has proposed to limit the statutory right to transfer, to transfers:

- To personal pension scheme operated by providers that are authorised by the Financial Conduct Authority;
- To authorised master trusts; and
- Where a genuine employment link to an occupational pension scheme can be evidenced.

This was supported by the vast majority of respondents to the consultation and should cover the overwhelming number of transfer cases. As a result the restrictions will be brought into effect. Although this could mean that members would no longer have a statutory right to transfer their pension savings overseas, the government is to engage with the industry further to consider how to best extend the proposals to include genuine transfer requests to schemes outside of the UK. There is no intention to block legitimate transfer requests to QROPS.

The government will also engage further with the industry on the specific details for an employment link for transfers to occupational pension schemes. There are concerns that fraudsters could circumvent the requirement, and so further work is required.

Non-statutory transfers are unaffected by the proposals, and the government expects trustees and providers to continue to conduct the same levels of due diligence on such cases as they currently do. Some scheme rules do not currently provide for non-statutory transfers and the government will consider whether there is a need to provide a power for schemes to amend their rules to allow this.

The new statutory right to transfer will not be implemented until the authorisation regime for master trusts has been fully introduced in 2019.

Registering New Pension Schemes

The relatively simple process for registering a new pension scheme has been exploited by scammers in recent years and the government's consultation sought to make it harder to do this.

The vast majority of respondents to the consultation agreed with the proposal to block dormant companies from registering new pension schemes. The next Finance Bill will provide that all new pension scheme registrations will have to be made through active companies, although HMRC will be given a discretion to register schemes from dormant companies in certain circumstances.

The consultation also looked at the governance of small self-administered schemes (SSASs), that are often used by fraudsters. Until 2006, it was a requirement for all SSASs to have a pensioneer trustee, that was independent of the other trustees. The government has decided not to reintroduce pensioneer trustees at this stage though, believing that members should be free to choose their own investments.

Comment

There is no simple answer to the scourge of pension scams. If there was, the problem would have been solved before now. The proposals made by the government in its consultation were rightly welcomed by the industry, and should provide clarity to everyone involved in pension transfers. A ban on cold calling in particular will help to protect members' pension savings, by making it harder for fraudsters to initiate the first contact with an often unsuspecting member. While it may not stop the scammers from contacting members, the very existence of a cold calling ban – if publicised properly – should help to protect pension savings.

In view of how much support the consultation’s proposals received, it is very disappointing that the ban on cold calling and the restrictions on the statutory right to transfer are still some way from being introduced. A Pensions Bill was not announced in this year's Queen's Speech, and while a Bill could still be introduced, it seems unlikely. The new statutory right to transfer will not be fully introduced until 2019, and the concern is that the ban on cold calling could also be delayed until then.

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