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10 February 2017

Dear Sir/Madam

## **Joint HMT and DWP Pension Scams Consultation**

This is the response of the Financial Services Consumer Panel (the Panel) to the joint HMT and DWP consultation on pension scams.

We support the majority of the proposals in the consultation, particularly the proposed 'cooling off' period, given that time pressures and 'limited offer period' deadlines are used by many pension scams.

We would add:

- It would be easier to prevent those scams that involve accessing pension pots to take advantage of investment opportunities if there was a list of investments that are permitted for inclusion within SIPPs. The absence of a definitive list means there's no way of advisers or investors making sure they are only investing in approved assets. We have raised this with the FCA before, and believe it is the right time to look at it again.
- We believe that HMT and the FCA should consider a blanket ban on investment promotions and adverts that refer to a specific rate of return. Tantalisingly high (i.e. unrealistic) levels of investment return are a common feature in 'boiler room' scams, unregulated investments and promotions of regulated investments<sup>1</sup>. Otherwise cautious older investors have been lured in by the promise of returns better than they can get on their savings accounts. This might be difficult to enforce for unregulated investments but is an issue that needs to be addressed.

Yours sincerely

Sue Lewis  
Chair, Financial Services Consumer Panel

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<sup>1</sup> The Guardian, September 2016 <https://www.theguardian.com/money/2016/sep/07/investors-risk-losing-8m-in-failed-mini-bonds>

## Questions

### **Chapter 2 – What is 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 definition set out in the paper, but Government and regulators also need to address other instances of fraud which the definition does not cover. Persuading people to transfer their money to a third party pretending to be their bank may not fall within the pension scam definition but requires urgent action given the amount of detriment it causes.

While not covered by this consultation, we also believe the FCA should go beyond fraud and scams to address creditors or debt collectors trying to persuade people to pay off their debts from their pension pot.

### **Chapter 3 – Banning cold calling in relation to pensions**

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

There is no evidence that suggests consumers ever benefit from cold calling. For that reason we completely support a ban.

#### **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?**

The ban should also cover cold calls by debt management companies, IVA firms, insolvency practitioners, and similar organisations that may cold call over 55s to 'explain' how they can use their pension pots to repay creditors and clear debts.

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

Yes, with a couple of reservations. First, it is unclear from the detail on 'excluding legitimate interactions' whether the ban would cover instances where a customer's details have been passed between different brands that are part of the same institution.

Second, the examples referred to as 'express requests' don't include instances where consumers have contacted firms by submitting online auto-fill forms. Firms use these to trigger contacts unrelated to the original purpose for which the consumer filled in the form, and so cannot be regarded as an 'express request'.

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

A ban on phone cold calls will cause scammers to rely increasingly on electronic contacts, which should therefore also be subject to the proposed ban.

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

To the suggested channels, we would add social media, fund supermarkets and online investment services (such as platforms and robo-advisers). Consumers' awareness of the FOS and FSCS should also be raised as part of this approach, particularly the protection implications of unregulated investments.

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

However, we do not think the consultation goes far enough on the supervision and enforcement of the proposals. There needs to be a credible deterrent to discourage scammers. Rules alone cannot hope to be effective. Despite the Information Commissioner's rules, for example, StepChange reported that some 45 million adults had received nuisance calls or text messages<sup>2</sup>. The FCA, HMT and DWP should at the very least explore with OfCom, phone companies and the Information Commissioner how best to enforce against cold calls relating to financial products.

**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?**

As we highlight in our covering letter it would be easier to prevent those scams that involve accessing pension pots to take advantage of investment opportunities if there was a list of investments that are permitted for inclusion within SIPPs. HMRC scrapped such a list in 2006 which means there is no way of advisers or investors making sure they are only investing in approved assets.

We also consider that HMT and the FCA should look at introducing a blanket ban on investment promotions and adverts that refer to a specific rate of return. Unrealistic levels of investment return are a common feature in promotions, both from regulated and unregulated firms. They serve no positive purpose and potentially lure vulnerable consumers searching for yield.

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<sup>2</sup> "Got their Number" StepChange, 2015

<https://www.stepchange.org/Portals/0/Documents/media/reports/Got%20their%20number.pdf>

## List of Questions not answered

### Chapter 2 – What is a pension scam?

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

### Chapter 3 – Banning cold calling in relation to pensions

**Question 3.5** How can the government best maintain the clarity of existing PECR (Privacy and Electronic Communication) concepts in light of the proposed ban on pensions cold calling?

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

### Chapter 4 – 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?

**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?

**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?

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

**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?

**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?

**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?

**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?

**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?

**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?

### 5 – 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?**

**Question 5.2 Are there any further actions that the government should consider to prevent SSASs (Small Self-Administered Schemes) being used as vehicles for pension scams?**