Which?, 2 Marylebone Road, London, NW1 4DF
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Response to: HM Treasury consultation on pension scams

Consultation Response

Pension scams consultation
HM Treasury
1 Horse Guards Road
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About Which?

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

- The ban on pension cold calling is welcome, but should be expanded to include calls that offer to trace lost pensions.
- The Government should make it clear that the scope of the ban includes inducements to transfer funds to the consumer's own bank account, from which they might be further transferred as part of the scam.
- The Government should monitor consumer awareness of the ban and be prepared to take further measures if awareness remains low.
- There would be benefits to extending the proposed ban to all electronic communications. It would ensure consistency and would future-proof the ban to guard against any innovations in scamming via future forms of electronic communications.
- Limits on consumers' statutory right to transfer a pension need to be proportionate and well-targeted. These measures must not make it unnecessarily hard to transfer to low-risk schemes.
- We welcome the multi-pronged approach which tackles scammers' ability to open fraudulent schemes, to market fraudulent schemes and to receive transfers into fraudulent schemes.

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- The Government's approach to tackling pension scams is only part of a range of measures and tools that are needed to prevent scams more widely. The Government should ensure banks introduce greater protections for customers against bank transfer scams, as well as supporting network-level call blocking to stop nuisance calls.

Introduction

Which? welcomes the opportunity to respond to HM Treasury's consultation on pension scams, and we broadly agree with the measures proposed in this consultation. The harm caused by pension scams is often considerable. They can cost people their life savings, and leave people facing retirement with limited income, and little or no opportunity to build their pension savings back up.

In July 2016, Which? published an investigation into pension scams, that looked at websites that appear to offer pension advice but are in fact unregulated lead generation websites, companies offering early pension release, and unsolicited marketing calls in relation to pensions. Many Which? members have shared their experiences of receiving suspicious cold calls asking about their pension arrangements, and one Which? member was contacted via LinkedIn by a fraudster attempting to persuade her to cash in her final salary pension.

The steps outlined in the consultation should help to combat scammers and protect consumers from potential harm. However, it is important that the Government recognises that scammers will adapt their methods and evolve their techniques to counter whatever measures are introduced. The Government must therefore ensure that its preventative tactics and actions keep pace with the changing methods used by scammers. A ban on cold calling in relation to pensions, or any sector for that matter, is likely to be difficult to enforce, and doing so may well simply displace attempts at scamming to other mediums, such as email or text messaging, or to a different time, such as when someone enters a drawdown or starts taking an annuity, or to other financial products, such as non-pensions savings.

As such, the measures outlined in this consultation must form part of a wider strategy and joined-up, holistic approach to preventing scams. This should include the Government working together with regulators and businesses from all sectors to introduce new technology, take enforcement action, and align businesses' incentives to ensure consumers are protected from scams.

- Which? supports moves from Ofcom and the telecoms industry to introduce network-level call blocking. This should greatly reduce mass cold calling attempts, which would include pension scams, to a greater degree than a ban.

- Which? supports the Information Commissioner's Office's (ICO) enforcement of firms' compliance with data protection law. Earlier in 2017, we published an investigation into data brokers, and uncovered the ease with which potential pension cold callers may be able to purchase consumers' data. We investigated a number of data-selling companies, posing as a fictitious firm with the intention of contacting people about releasing their pension early, and some firms appeared willing to sell us data without carrying out due diligence at the point the orders were placed. We were able to obtain forms or invoices from 10 firms, but stopped short of actually buying any data, and passed our findings to the Information Commissioner's Office.

- Which? is also calling on the Government to ensure appropriate measures are introduced to protect consumers who are tricked into transferring funds from their bank account. This would help consumers who are subject to a much broader range of scams than just pension scams, and was the subject of our super-complaint to the Payment Systems Regulator in September 2016.

Below are our responses to some of the specific issues outlined in the consultation.

Consumer detriment caused by pension scam activity

The Government's definition of a pension scam is right to include a wide category of activities used by fraudsters, and it broadly captures the key areas of consumer detriment. The key risk of consumer detriment from scams is financial, with consumers losing money as a result of under-performing or non-existent investments, or being subjected to an unexpected high tax charge. The distress caused by losing money as part of a scam is also significant, as is the hassle and discomfort caused by high-pressure sales tactics, including cold calling.

Cold calling about pensions

It is conceivable that a consumer could benefit from receiving a cold call from a legitimate financial services firm in relation to their pension. However, any benefit that does arise from cold calling about pensions, both in financial terms and in terms of the number of beneficiaries, is likely to be significantly outweighed by the total detriment caused by pension scams.

A ban on cold calling should not have a detrimental impact on the business of legitimate firms. Even if a small number of legitimate firms currently use cold calling as a marketing route, they could still reach potential customers via other routes following a ban, and any resulting consumer benefit would therefore remain.

The scope of the ban

We agree that the scope of the proposed ban on cold calling should include the actions set out in the consultation. However, offering to trace a "lost" pension should also be included, as this may well lead to a concerning transfer once a relationship has been established and a pension identified. It is also important to recognise that regardless of whether a pension is located, there is a risk to the consumer in the relationship being established in first place, as this relationship can then be used to expose a victim to other potential scams in the future.

One of the areas scoped for the ban is "inducements to release funds from a pension and transfer them into a bank account". This is important and very welcome, and it should be made clear that it captures inducements to release funds from a pension and transfer them into the consumer's own bank account, from which they might be further transferred as part of a scam.

We agree that existing client relationships and express requests should be excluded from the proposed ban. In these cases the consumer has already given some form of consent to be contacted, and it is legitimate for firms to contact them about pension products and services they offer. Blocking communications that consumers have consented to receive would make it unnecessarily harder for businesses to market their products and services, and could ultimately lead to consumers missing out on products and services they may be interested in.

Extending the proposed ban to include all electronic communications

We acknowledge that there would be benefits to extending the proposed ban to all electronic communications, including email and text messages. Primarily, it would ensure consistency across the various types of electronic communications, and would in effect future-proof the ban to guard against any innovations in scamming via future forms of electronic communication that scammers might use. This is important, as scammers will adapt their approaches if a ban on cold calling is introduced, and by cutting off all electronic communications, the Government could ensure that a variety of potential future avenues to scammers are permanently shut down.

The main cost to this proposal would be if legitimate firms currently use unsolicited texts or emails to get business in relation to pensions. However, there is little evidence to suggest that this is currently the case.

Which? notes that a ban on cold calling is likely to be difficult to enforce, and this would be the same for a ban on electronic communications. However, technology to filter and block messages, and indeed trace communications, already exists. As with measures to directly block calls at a network level, Which? is supportive of additional measures that would complement a ban.

In our July 2016 investigation of pension scams, we found significant numbers of paid-for adverts on search engines such as Google, aimed at attracting consumers seeking to find out how to withdraw money from their pension, following the pension freedom reforms. Many adverts appeared to offer pension advice, but are in fact linked to unregulated lead generation websites, while other companies overstate the ease, speed and benefits of pension transfers, or pitch the potential benefits of releasing cash from a pension without mentioning the risks. Firms may circumvent a ban on cold calling by enticing consumers to complete a contact form online, before calling them back or passing the details onto another firm. Which? would support further work into the conduct of lead generation companies.

Interaction with the Privacy and Electronic Communications Regulations (PECR)

It is important that the Government maintains the clarity of existing PECR restrictions on unsolicited marketing calls in relation to other products and industries beyond pensions.

The Privacy and Electronic Communications Regulations 2003 (PECR) sit alongside the Data Protection Act 1998 and include specific rules on direct marketing calls. Most restrictions in PECR relate to unsolicited marketing, meaning a message which has not been specifically requested by the recipient. PECR sets out how businesses can lawfully conduct unsolicited marketing, which involves, amongst other things, obtaining the right level and type of consent from the consumer.

In order to maintain the clarity of PECR concepts in light of the proposed ban on pensions cold calling, the concept and legal definition of pensions cold calling must be very clearly defined and properly delineated in the primary legislation. There would no doubt be every effort made to circumvent a ban and an unclear or weak definition would leave the ban open to being undermined.

Raising consumer awareness of the ban

There needs to be a proportionate public effort made by the Government to make consumers aware that all cold calls they receive in relation to pensions are illegitimate. This communication should also maintain the clarity of existing PECR concepts, and make it clear that unlike in relation to other forms of unsolicited marketing, no form of pensions cold calling is lawful, and consumers should therefore act accordingly.

We agree that using multiple channels to publicise the ban increases the likelihood of success, and using a variety of partners, such as Which?, the Information Commissioner's Office (ICO) and the Money Advice Service, to convey the messages would also be beneficial.

In addition, a requirement to mention the ban on pensions cold calling could also form part of the "second line of defence" rules governing the risk warnings given by pension providers to consumers seeking to access their pension savings.

The Government should monitor consumer awareness of the ban and be prepared to take further measures if awareness remains low.

Enforcement

Which? welcomes the proposal to give the ICO the power to use its existing enforcement toolkit to enforce the proposed ban on cold calling in relation to pensions. The ICO is well placed to take action against those who breach the ban. However, a model that relies on consumers reporting cold calls about pensions will always be sluggish and may miss the long tail of the problem. As the ICO risk based approach will target the most serious cases, the ban might not act as a strong deterrent for illegitimate firms operating a pension scam on a smaller scale.

While the ICO takes a robust approach to enforcement in relation to tackling nuisance calls, and has seen their powers strengthened over recent years, telecommunications companies are likely to be more effective at stopping unsolicited calls than either regulators or consumers. The Government, working with Ofcom, should therefore consider what further action should be taken by telecoms providers. In particular, the Government should support telecoms providers to advance network-level call blocking technology to protect their customers from potential nuisance and scam calls. Ofcom should also what incentives could be placed on network operators to stop these unwanted calls and texts from reaching their customers. Recent measures introduced by companies such as BT and Vodafone demonstrate that these kinds of technical steps are possible.

Limiting the statutory right to transfer

It is important that any measures to limit the existing statutory right to transfer a pension are proportionate, and do not unnecessarily harm competition in the pension market by making it unduly difficult or time-consuming to make a legitimate transfer.

The approach taken should be risk-based. For example, we understand that currently most pension transfer scams involve the use of Small Self-administered Schemes (SSASs) or Qualifying Recognised Overseas Pension Schemes (QROPSs). Greater protections are justified if a consumer is considering transferring to schemes of this type, or other high-risk scheme types that have been identified as open to potential abuse.

Transfers into lower-risk schemes – such as large occupational pension schemes, FCA regulated providers, and master trusts that meet the Pension Regulator's voluntary master trust assurance framework or are authorised – do not appear to warrant additional measures, as these schemes are already subject to regulatory oversight that should protect consumers.

It would therefore be better to place well-targeted limits on the statutory right to transfer, rather than a blanket change. Those limits should be mindful of the risk of abuse by pension schemes, or well-meant over-zealousness that causes consumers to miss out on genuine opportunities.

The criteria used to determine whether a transfer is concerning or not – such as restoring the requirement of an earnings link – will need to be carefully considered to avoid inadvertently disadvantaging certain types of legitimate schemes or consumers, such as start-ups or people with irregular working patterns with an employer. This may also be open to gaming by scammers, who will undoubtedly adapt their methods to attempt to circumvent any such criteria. Some form of joint register of regulated genuine schemes or trusts, held by the Financial Conduct Authority and the Pensions Regulator, may be less open to abuse or unintended consequences, with transfers to schemes or trusts not on the list subject to additional measures.

Rather than a hard limit that allows schemes to block a permitted transfer, the Government should consider intermediate options, including conditions on exercising the right to transfer. For example, there could be a requirement to take regulated financial advice if transferring into particular types of high-risk schemes. This could be done in a way that ensured, for any transfer, there was a regulated entity that could be held accountable for any subsequent fraud. If the receiving pension scheme was regulated, it could be held accountable; if the receiving pension scheme was not regulated, the adviser who provided the advice could be held accountable.

The alternative approach outlined in the consultation - of introducing a statutory discharge form and a cooling off period - is unlikely to provide effective protection.

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